

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office

COMMITTEE ON NATURAL RESOURCES  
January 18, 2006  
LB 930, 805, 933

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, January 18, 2006, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 930, LB 933, and LB 805. Senators present: Ed Schrock, Chairperson; Elaine Stuhr, Vice Chairperson; Carol Hudkins; Gail Kopplin; Bob Kremer; LeRoy Louden; Vickie McDonald; and Adrian Smith. Senators absent: None.

SENATOR SCHROCK: Good afternoon. For the record my name is Ed Schrock and I chair the Legislature's Natural Resources Committee and I would like to do some introductions first. First of all, I'll start to my far right: Senator LeRoy Louden from Ellsworth. This is the first committee hearing we've had this year, so I'm a little rusty at this. Next to Senator Louden is Senator Gail Kopplin from Gretna; and next to Senator Kopplin is Senator Carol Hudkins from Malcolm and she's been in the Legislature as long as I have been; and next to her is committee counsel, Jody Gittins. The vice chair of the committee is Elaine Stuhr. She is introducing a bill at another hearing. I understand Senator McDonald is going to be a little late; Senator Stuhr is from Bradshaw; Senator McDonald is from St. Paul, Nebraska; and I don't know where Senator Kremer is, he's from Aurora; and then we have Senator Smith who is present and he is from Gering. And our committee clerk today is a substitute, although she has done this before, and she is Jeanette Thiem and she is on the staff of Speaker Brashear today, so now I'm beholding to the Speaker, but she works for parsnips, I do know that. I dug some parsnips this weekend and she's going to partake in those, so. We have three bills to do this afternoon, but before that we have two confirmation hearings. I didn't introduce our page. Where did he go to? There he is. We have Marcus Papenhausen. Did I say that right?

MARCUS PAPENHAUSEN: Yep.

SENATOR SCHROCK: And he is a sophomore at UNL. He's from Coleridge and he's studying elementary education. So we need good teachers, so we're glad Marcus is with us. Some instructions: If you wish to testify on a bill, come to the front of the room when the bill is to be heard. First of all, turn off your cell phones or pagers that make any

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 2

noise. And there are sign-in sheets at each corner of the hearing room. Pick one of those up and fill it out. We would prefer you do that before you testify. But if for some reason or another you decide to testify on the spur of the moment, make sure you fill one out before you leave and please print. When you get in front of the committee, please state your name and spell it for the record. That way the transcribers and the committee clerk don't have problems. We've been joined by Senator McDonald and Senator Kremer. Welcome to the proceedings. With that, if you have handout material, Marcus will help you. If you choose not to testify, you can submit written testimony. And then no vocal display or booing or hissing if you like or dislike what somebody says. Please relax, try to be nervous...try not to be nervous. If you're testifying and you get a little cottonmouth, tell me or tell Marcus and we'll get you a glass of water. Otherwise, this isn't a real intense proceeding. With that, I think the first procedure for the day is a familiar face, we have Mark Pinkerton from Game and Parks. Mark, would you come forward. And Mark, this is a reappointment which is unusual for the Game and Parks Commission, and actually it's almost not constitutional or legal but tell us why this is an exception and then tell us something about yourself.

CONFIRMATION HEARING ON  
MARK PINKERTON TO THE  
GAME AND PARKS COMMISSION

MARK PINKERTON: (Exhibit 1) Okay and thank you, Ed, and thank you, Senators. My name is Mark Pinkerton, P-i-n-k-e-r-t-o-n, and I am from Beatrice, Nebraska. Boy, you put me on the spot, Senator Schrock. I'll try hard not to be nervous. (Laugh) This is an unusual situation, in fact my whole being here is an unusual situation starting with the first couple of years I served. A little history from the past, Lincoln used to be included in District 1 which is in southeast Nebraska and that district had been represented by somebody from Lincoln for almost 30 years, I believe 27 years. And because of wanting representation throughout the area, they added a seat to the Game and Parks Commission and they gave Lincoln their own permanent seat which became District 8. Mr. Jim Stuart Jr. was in the District 1 seat at the time and they moved him over to

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 3

District 8 or the Lincoln seat. So then I was asked to finish out the term for District 1, or that's...basically that happened halfway through this whole process which made me eligible to serve a complete term of my own. So because of the new district in Game and Parks and because of some of the changes in the legislation, we came upon a new situation and this is how it was dealt with and here we are today. So I am before you asking to serve a term of my own on the Game and Parks Commission. A little bit about myself, I'm from Beatrice, Nebraska. I grew up there. I practice dentistry in Wilber, Nebraska. I have three boys. My wife Roberta is here. She works for OPPD. I have a very deep respect and passion for outdoor Nebraska and all it has to offer. I've been involved with hunting and fishing extensively. My wife would say I'm obsessed and that's probably true. I'm an avid field trialer. I run dogs off horseback, travel throughout seven or eight states in the Midwest competing with my dogs. I serve on the school board at Tri-County. So with that and a lot of other activities I do, I'm very involved in the local community. Spent many years as a hunter education instructor, both as a firearm instructor and doing a little bit in the bow hunter education area. So a lot of my involvement in life revolves around hunting and the outdoors. And the reason that I enjoy serving on Game and Parks and would like to continue to do so is because I've received a lot of enjoyment and it's been very rewarding the experiences that I've had in my years hunting and fishing and being in outdoor Nebraska, and I feel like I want to make a difference and I want to give something back. And in my first two and a half or three years serving with the Commission, I feel like we've gotten a lot accomplished and would like to continue with those good works

SENATOR SCHROCK: Thank you, Mark. Are there questions?  
Senator Hudkins.

SENATOR HUDKINS: Dr. Pinkerton, in the years that you have served, what in your opinion that the Game and Parks has done that you were a part of has given the public the most pleasure or the most...see where I'm going with this? What has been your greatest accomplishment thus far?

MARK PINKERTON: There's a couple things that I think I've been successful in accomplishing or been involved with. One of them is a program that we've started recently within the

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 4

last year or so and it's really taken off and going. And with the help of some of the other commissioners and with a big push from Commissioner Grewcock in Omaha, we've started a half price lifetime permit program for children that are...for youth from ages, you know, 0 to 15. By state statute we're not able to sell any reduced permits, but what we've done is we've gone out and raised money from individuals so that they can offset the other half of the cost of the permit so we can then actually allow people to purchase that permit for half price. And probably the most important thing to keep Game and Parks active and strong in the years to come, is that we get young people involved in hunting and fishing and the outdoors and it's a nationwide trend that those numbers are decreasing. And so we are trying to increase those numbers and kind of carry on the family tradition and the tradition of outdoorsmen in Nebraska. So that's one program that has been really on the forefront and I think it's going to do great things. While I was chairman, I helped to hire a new assistant director, put a lot of time in on that, who is in charge of informational and education but he also has great expertise in marketing and advertising. And we are going to try to do a much better job of letting people know in Nebraska and across the country what we have to offer and the good things in this state because we're trying to be more self-sufficient, and that way we're not going to be so dependent on our general funds that come from you and the Legislature. So we're trying to be proactive and do that kind of thing. I guess the other thing overall that I've been really pleased to be able to do is...I feel like even though I'm appointed, I have the same responsibilities that you do as state senators to the people in my district. And I spend a lot of time going out to events and talking to people and making myself available. And if people have questions, I spend a lot of time making sure they get the answers. And I've gotten involved in several different processes as we change rules and regulations with Game and Parks. For one, with horseback riding down at Rock Creek Station where I tried to work with both sides and iron out a compromise so that both sides won and it was a cooperative effort instead of what was happening as we were going to cut down the amount of horseback riding down at Rock Creek Station on the wildlife management area side because that's funded by wildlife funds, Pitman-Robertson Funds, and there were some concerns there. And so we worked out an agreement

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 5

where we are still allowing a lot of horseback riding there and I think both sides are pleased with that and I felt like that worked out really well.

SENATOR HUDKINS: Thank you.

SENATOR SCHROCK: Other questions? Senator Louden.

SENATOR LOUDEN: Yeah, Dr. Pinkerton, since you've been on there what two years now, is it?

MARK PINKERTON: Two and a half, yes, Senator.

SENATOR LOUDEN: Something like that. The district I represent is 49th in northwest corner of Nebraska and the Game and Parks has been acquiring land from time to time. What's your position on the Game and Parks going out into the market to acquire productive agricultural land and competing against local people for that same productive land? What position do you take on that?

MARK PINKERTON: Well, Senator, first of all I would say that most of the land that we acquire isn't productive agricultural land. It's maybe more marginal land and it's land that maybe is more suited to hunters and recreation...hunting and recreation, excuse me. We try very hard not to ever be in direct competition with people in the agricultural business. We go out and we send our real estate people out and we've, in fact, we've directed them to be a lot tougher with this about contacting all the surrounding neighbors on pieces of land and making sure that we weren't stepping on toes as we acquired it, so that we're trying not to take land out of production or take land away from people when maybe it's adjacent to their ground if at all possible. And we've done, since I've been on the board, we've done maybe one or two friendly condemnations, but that was worked out and it was in total agreement with the people in the area. And that is about the only way we can acquire school lands or one of the only ways we can acquire school lands in certain situations and it is an avenue we can use but we're very careful about using it. So I think we're pretty cautious. And the group of commissioners as a whole want to be very careful about how we go about those things and make sure that we're not taking away from other landowners, and also, that we're not in the press looking

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 6

like we're going beyond the scope of what we should be doing. So I think we're pretty cautious about that, Senator.

SENATOR LOUDEN: Thank you.

MARK PINKERTON: Does that come close to answering your question?

SENATOR LOUDEN: I'll remind you of it. Thank you.

MARK PINKERTON: Okay. (Laugh)

SENATOR SCHROCK: Senator Hudkins.

SENATOR HUDKINS: Just a follow up on Senator Louden's question. Are you familiar with the Branched Oak Lake area?

MARK PINKERTON: Yes, I am.

SENATOR HUDKINS: Okay. That ground 40 years ago was taken for the most part by condemnation by the Army Corps of Engineers. And for years and years because of the park permit fees, there have been lots of improvements made, lots of things built, and just all kinds of things being done. The last few years we have noticed that along the north side of the lake along the grounds there that it is being fenced for livestock. And the ground is being rented out to whomever can come up with the rental fees. What is your thoughts on that and do you think that that is really the thing the Game and Parks should be doing?

MARK PINKERTON: Well, I'm quite familiar with that area because that's the area with the field trial grounds, and I've spent quite a bit of time the last years when we did the Focus on Pheasant project starting about...just after I came on or right before I came on. We removed a lot of brush and trees and got it more to a grassland type area which has been with research discovered or found or reaffirmed that that was better for pheasants. So when I first came on, we also did that with the field trial grounds to try and open it up because the field trial grounds had gotten so woolly that competitions that were there were pretty tough. There's several land management tools you can use to keep areas in a condition you want. And in a field

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 7

trial grounds which is where we're grazing, you can't have grass that's waist high and shoulder high or you can't see the dogs to compete. And the two most effective management tools are haying and grazing or controlled burns. And as you know, this spring the burn there that was accidental was not a good thing. So that's one of the only tools we have available to control what the grounds look like and to keep them in good shape for what we're trying to do with the area out there. Any other questions on that, Senator Hudkins?

SENATOR HUDKINS: No, that's fine. Thank you.

MARK PINKERTON: Okay.

SENATOR SCHROCK: Other questions? Thank you, Dr. Pinkerton, for being with us.

MARK PINKERTON: Thank you, Senator Schrock. Thank you, Senators.

SENATOR SCHROCK: Is there anyone who would like to appear in support of Mark Pinkerton's appointment? We have a letter here on behalf of the Nebraska Cattlemen on another appointment. Is there anybody that would appear in opposition? Any neutral testimony? If not, we will close the hearing on Mark Pinkerton's appointment to the Game and Parks Commission...reappointment by the way. And our second item of the day is for Vaughn Blum and Mike Linder's going to testify. Vaughn Blum from Columbus who will be appointed to the Environmental Quality Council.

CONFIRMATION HEARING ON  
VAUGHN BLUM TO THE  
ENVIRONMENTAL QUALITY COUNCIL

MIKE LINDER: (Exhibits 2 and 3) Thank you, Senator Schrock, members of the committee. My name is Mike Linder, last name L-i-n-d-e-r. I'm the director of Nebraska Department of Environmental Quality. I am here today at the request of and on behalf of Vaughn Blum. Vaughn is the general manager of the Cargill facility in Schuyler, Nebraska.

SENATOR SCHROCK: Do you want to spell his name for us?

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 8

MIKE LINDER: Last name B-l-u-m. Vaughn represents the food products manufacturing category or sector in the...for the Council. He...this is a reappointment. He served five years, I think he filled an unexpired term and then had one four-year term, so. Vaughn asked me to read a statement into the record and I have a copy of the statement for you. This is a letter, actually an e-mail to me dated January 18, 2006. To Honorable Members of the Natural Resources Committee: Please accept my apology for not being able to attend the hearing at the scheduled time and also allowing Mike Linder to represent me by reading this statement. Brief background, raised on a northwestern Iowa farm, and have had employment with three meat processing companies during my career, with Cargill being the last. Started with them in 1975 and have been in Nebraska for 18 of those years. As you know, I've had the privilege to serve on the Environmental Quality Council for five years and have been asked to serve another term. Feel my 40 years of experience with the food processing and cattle industry has and is beneficial to the goals for which the Council was created. By being an oversight group to finalize the Department of Environmental Quality's rules and regulations, we must balance what is best for improving the quality of the environment that we all live in and continuing a strong competitive agricultural business setting for our state. The welfare of the people of Nebraska depends on both the DEQ and members of the Council doing what is best on a short- and long-term basis. Members of the council must have an open mind and be able to see both sides of an issue and then make a decision with that information. Hopefully, I have demonstrated that ability these past five years. Again, let me issue my apologies for my absence at this hearing. Sincerely, Vaughn Blum, General Manager, Cargill, Schuyler, Nebraska. And in talking with Vaughn on the telephone, he did indicate that he had planned to be here but had a last minute business conflict that he didn't feel he could not be available for, so. With that, it concludes my testimony.

SENATOR SCHROCK: Thank you, Mr. Linder. Are there questions? I just might ask has he been attentive at the meetings, and attends, and participates.

MIKE LINDER: He has been. As he indicated in his letter,



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 9

LB 930

he has a lot of experience in the food processing industry and beef slaughterhouse in Schuyler.

SENATOR SCHROCK: Okay. Thank you, Mike.

MIKE LINDER: Thank you.

SENATOR SCHROCK: (Exhibit 4) Are there other people who would testify in behalf of Mr. Blum? Opponent testimony? We have a letter from the Nebraska Cattlemen recommending that he be reappointed. Anybody who would oppose Mr. Blum's appointment? Any neutral testimony? If not that will close the hearing on Vaughn Blum. And we will move on to our first bill, which is LB 930 and Senator Beutler. Go ahead, Senator Beutler.

LB 930

SENATOR BEUTLER: (Exhibit 4) Mr. Chairman, members of the committee, where do we begin on the subject of water?

SENATOR HUDKINS: Give us your name first.

SENATOR BEUTLER: Chris Beutler. I think what I would like to do to start with is to go back to kind of the basic premises of water law in Nebraska so that the position I would espouse to you on the matter is more readily understandable. I really do think we're at a critical juncture in this matter. And by that I mean I think we are at a point where this Legislature, this committee, this body either needs to decide that water irrigators will be subsidized or they will not be subsidized. And if the determination is that irrigators are to be subsidized, then for the first time in the history of the state a whole new area of state spending will be opened up. The history of the state to date and the legal structures that we have put in place all, in my opinion, make the assumption that water irrigation should not be subsidized. With respect to surface water, the principle that we have adopted is first in time, first in right. And so those irrigators who got the first legal right have the right to water and so forth until the last in time. And to the extent that there's not enough water, then those who are at the end of the line simply don't get any water. And when that happens, they

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 10

LB 930

never come to the state and say you should give me money because there's no water left. That has not been the understanding and the system. Likewise with regard to ground water, while we have not had the same legal structure and while in ground water we have adopted the legal structure that we call correlative rights, the same principle applies. Under correlative rights, the agreement is there is no first in time, first in right, that anybody can put down a ground water well. And when they do, they have equal rights with everybody else who in prior times put down a ground water well. And the agreement under the law is that when there's not enough water to go around then everybody shares equally whatever the deprivation may be. And again, there's never been any provision in law indicating that people would be paid, for example, not to irrigate. I think that except for the payments we started making last year as part of the CREP program, we have never in this state paid people not to irrigate. And my starting position on all this is that we should not get involved in doing that now. But we have some big problems on our hands. Some people say the biggest problem obviously is in the Republican Valley where the circumstance of drought has resulted in there not being enough water and where the circumstance of following our legal obligations have exacerbated that problem. Obviously, we're in a position in that particular basin where the Department of Water Resources is estimating that 125,000 acres need to be permanently taken out of production. If you use the department's estimate of \$1,000.00 an acre, that's a \$125 million problem, a huge, huge problem. I'm of the opinion that the state should be a part of the solution. I guess I feel that way mainly because I do think the people of that basin were somewhat misled by politicians who said and argued things they never should have said and argued and by organizations who have...certain organizations who have resisted all change for the last 20 years and filled the people with a false hope that the situation was something other than what it really was. And so there needs to be some accommodation to help the people in the Republican Valley financially to resolve this short-term problem and to bring the system into equilibrium. But I think it's incumbent upon the Legislature and this committee that no short-term solution should be endorsed until measures have been agreed to which will bring this system into balance in the long run and ensure that any aid that's given to the end

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 11

LB 930

of transitioning the situation to an unsubsidized position should ensure that that short-term aid will not "metamorphosize" into a continuing subsidy. For example, the money that we put out last year and that we're putting out to match federal funds in the CREP program, those are for short-term easements. At a certain point in time, they will have to be renewed if we're going to continue to keep that land out of production. Is the state then going to put more money in again when those come up again or will we expect by that point in time that the situation down there will be brought into balance and to equilibrium? I don't want to see a situation where general funds are used until we know that other funding mechanisms are in place that ensure the buyout of irrigation rights as rapidly as possible and to the extent necessary to bring this system into compliance with our legal obligations and with our capacity. I think that can be done with conservation easements. I think conservation easements need to be a part of our program. But I also think that part of the responsibility, part of the program along with the use of state sales and income taxes should be conservation fees on irrigators. The costs of regulation are going up dramatically. We will be asked, the Appropriations Committee will be asked to spend an additional \$7.5 million a year just on regulation, on doing the studies, on doing the programs, on helping the NRDs set up management programs. The total cost of the various aspects of regulation is going to increase by \$7.5 million a year. That's completely aside from the overwhelming figure that we're looking at to permanently buy out irrigation rights in various areas. It seems to me that as a part of good governing principles that the irrigators should bear part of the burden of the cost of necessary state regulation. I have often pointed out that in banking and insurance the costs of regulation are borne 100 percent by the industries regulated. Likewise, in almost any other area that we regulate, at least a significant portion of the cost of regulation is borne by the regulated entities. Even with regard to livestock fees, livestock regulation fees, a part of that is borne by the livestock people. Likewise, I think in the area of water, especially considering the circumstances as a totality, that a part of the cost of regulation should be borne by all irrigators in the state. I have provided for a conservation fee in the bill. The use of the fee money would go to support the management of

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 12

LB 930

interrelated ground water and surface water resources, including but not limited to appropriate studies and modeling necessary or appropriate in order to accurately manage water usage. It could go to the acquisition of permanent water conservation easements or temporary water conservation easements or for the development and implementation of integrated management plans. So the purposes are broad and the purposes are varied so that the Department of Water Resources can put the money to use where it best determines that it will do the most good to get our system back in equilibrium where we are not overusing our resources in the most expeditious manner. When the bill was first drafted, I didn't put in an amount. But the fee, the conservation fee would be levied against municipal users and also against irrigation users. I have given you an amendment that suggests that the not to exceed figure for irrigated acres might be put in the area of \$2.00 and a recommendation that for the municipal resident the per capita fee be not more than \$1.00. The language in the fee section, then, is structured in such a way that if you add up the total amount of use by irrigation and the total amount of use in municipalities that the proportion of fees paid by irrigators or the proportion of fees paid by municipal users would be no greater than their percentage of the total water use so that there is some proportionality built into the bill. The bill also allows for a greater fee still not exceeding the limitations put in the bill, but allows for a varied fee, depending on whether the irrigation is in a fully appropriated or overappropriated area. And, of course, that's simply based on the fact that the costs in those areas may be substantially higher. But underlying the...the underlying justification for the fee generally is simply the general proposition that good government would indicate that the regulated industry should pay a part of the regulation fee. I've also handed out for you a little chart that shows how much money is raised by the maximum \$2.00 so you can easily see how much money would be raised if you reduced the fees proportionately. As you can see, there would be a considerable amount of money if you levied the maximum fee and enough money to start really dealing with the problem that exists in the state at this time. So that's the proposition. The fee is a per irrigated acre fee. It's added on to the county tax bill. That seemed to be the easiest way of processing the fee. And I won't go into the other technical details, but I think those are the

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 13

LB 930

general concepts of the bill. I would encourage this committee to start getting a handle on this problem as soon as possible. I think the committee is aware that time is passing and especially in the Republican Valley. We're going to be called to account for water usage in just a couple of years. And the longer this committee waits and the longer the Legislature waits and the longer we all wait to get at this problem the more difficult it's going to be to deal with the problem. So I hope the Legislature will take significant action this year to move on the problem. We have waited, waited, and waited so long that now we're in a crisis situation, and we ought to have learned our lesson and not exacerbate the crisis by waiting even longer to deal with what's in front of us because we know what's coming with respect to the Republican agreement. We know what's coming with respect to pending Platte Valley agreements. And we ought to stop listening to those forces that are saying do nothing, do nothing, do nothing, no change. We've listened to those forces long enough and here we are and the chickens have come home to roost. So I hope the committee will address the issue with great foresight this time around. Thank you, Mr. Chairman.

SENATOR SCHROCK: Thank you, Senator Beutler. Questions?  
Senator Kopplin.

SENATOR KOPPLIN: As I read this, the urban population is the per person, not meters or households, per person.

SENATOR BEUTLER: Right.

SENATOR KOPPLIN: Okay, thank you.

SENATOR BEUTLER: My theory on it was this, Senator, and, you know, you can think about lots of ways to try to make it fair. But the urban uses in total are somewhere in the neighborhood of 6 percent of total water usage. The irrigation uses are somewhere in the neighborhood of 92 to 95 percent of the total water usage. And so the language that's in the bill is intended to say that when you add those two uses together if the municipal use is 10 percent, then the portion...the total revenue raised by a levy on the urban areas would total 10 percent of the money collected. And that's the theory and that's how it's intended to be constructed.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 14

LB 930

SENATOR SCHROCK: Other questions? Senator McDonald.

SENATOR McDONALD: And I'm assuming you're thinking this is a statewide problem and that's why you have the irrigated land and also the municipalities a fee, so to speak.

SENATOR BEUTLER: Yes.

SENATOR McDONALD: How do you figure in the ranch country and dryland? Are they going to have to...do you have an idea for them or are they just not going to participate in the program?

SENATOR BEUTLER: Well, if dryland does not irrigate, all of the knowledge and information that we have right now doesn't tell us how to involve them in the solution, and so they are not subject to the water use fee. But if you're thinking that conservation practices on dryland have resulted in water not draining into the subsoil and not feeding into the streams, there is certainly some truth to that matter and perhaps from that some obligation for them also to participate in some program. But right now that particular usage, the quantification of it, has never been attempted. I have absolutely no information that would be the basis for including them. And in fact, the conversation on them really has only taken place within the last year I would say, Senator Schrock, wouldn't you? All prior time no thought was given to conservation practices as one of the elements of the problem. Did that answer your question? I...

SENATOR McDONALD: Well, I'm just thinking that you're saying this is a statewide problem, yet only certain individuals are having to participate in it.

SENATOR BEUTLER: Well, all of those who use water.

SENATOR McDONALD: But would they use more or less than somebody who lives in town?

SENATOR BEUTLER: Let me see if I understand your question. First of all, the tax is on irrigators as among farmers, and those who do not live in municipalities. There's no tax upon the rural domestic use. There's no tax upon stock

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 15

LB 930

wells, for example. So the only...the basic distinction is between those who use water to irrigate and those who do not. As far as domestic uses are concerned, rural domestic uses are not covered in the bill because they're so relatively insignificant but municipal uses are covered. Industrial uses are covered insofar as they're part of a municipal use, but not otherwise covered because those that are outside of a municipal system are, like the rural domestic wells, relatively insignificant.

SENATOR SCHROCK: Other questions? Senator Smith.

SENATOR SMITH: How would you say a rural domestic well would be different from a municipal use?

SENATOR BEUTLER: From a municipal use?

SENATOR SMITH: Right, a residential municipal use.

SENATOR BEUTLER: I don't think that it would be that much different.

SENATOR SMITH: So municipal, you're including the industrial use.

SENATOR BEUTLER: Yes. Any industrial use that participates by virtue of it being part of a municipal system would, of course, be included. There are some industrial situations, I'm sure, that are outside of municipalities. But the water use figures on that are just minimal. At some future time if that became significant, it would be...I think it would be right to include them in this...in a proposition of this nature.

SENATOR SMITH: So when you say the municipal per capita use or it would be levied on a per capita basis, would that be, you know, X number of people that happen to live in a house in town and you put that on their bill according to how many people they have or are we talking a municipal fee as a whole based on per capita, and then I assume some sort of determining factor for industrial consumption?

SENATOR BEUTLER: I envisioned it as a levy to be paid by the municipality based on the number of people in their municipalities. And the assumption is made that the

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 16

LB 930

relative industrial use within a particular municipality is more or less the same. But really those particular intricacies I don't think make that much difference because in the end, the municipalities are going to pay the full percentage of the water that they use overall.

SENATOR SMITH: So it would be retroactive, or I mean payment in arrears?

SENATOR BEUTLER: Yes.

SENATOR SMITH: But you see this as statewide. Is that accurate?

SENATOR BEUTLER: Yes.

SENATOR SMITH: So would it be assumed then that, say, those folks in the Upper Republican, because they've had a moratorium for quite some time and even regulated for an even longer time, that because they're consuming less now that they would be paying less because it's on a consumption basis?

SENATOR BEUTLER: Well, if you're talking about irrigation use and the number of irrigated acres declines, they would pay less, right.

SENATOR SMITH: Okay, thank you.

SENATOR SCHROCK: Other questions? Senator Louden.

SENATOR LOUDEN: Yeah, Senator Beutler, thank you for bringing this idea forward. I'm sure it needs debated. And as I've looked your bill over, why, it scares the heck out of me on the equality part of it, and I'll explain to you why I think so. For instance, somebody gets put on...you're going to presume they're charged a flat \$2.00 fee per acre as you feel states on irrigated ground.

SENATOR BEUTLER: Yeah, I don't know that it has to be \$2.00 an acre, but you're giving DWR the authority to go up to.

SENATOR LOUDEN: But for the sake of discussion, that's what you got here and that's what we'll go with.



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 17

LB 930

SENATOR BEUTLER: All right.

SENATOR LOUDEN: If someone puts 12 inches an acre on their irrigated ground, why, then that's \$2.00 an acre foot. Am I correct on that, that's what the cost of water would be for them because they're paying \$2.00 an acre? Now we get out west and some of those areas they're under water restrictions and NRDs are putting some restrictions and various things so they're probably putting wheat on that ground and they probably irrigate it once or so in the spring. Maybe they only put on eight inches. Well, if that's the case then, they're putting...it's costing nearly \$3.00 an acre foot for that water, just in a ballpark figuring off the barn door. But I mean their cost per acre foot went up considerably because they're not using as much water. At the same token, you can go up in the Sandhills someplace, they're pumping water on some of that alfalfa ground up there in the Sandhills. And I've known some of them people go maybe 36 inches through the year so they'd be down around 75 cents an acre foot for water. So I see this disparity from one place to the other. My question is how come you didn't just put a 10 mill levy on every gallon of water pumped to raise revenue?

SENATOR BEUTLER: Well, you can go to different degrees of sophistication. And you can do it that way if you want to do it that way. The Department of Water Resources recommended a per irrigated acre methodology as being one that's practical to do. I mean some taxes are hard to levy. You can argue almost any tax we have should be made more sophisticated because it doesn't equally apply to everybody, you know. And so the question is, what is the balance between exact fairness and practicality when it comes in terms of levying the tax and collecting the tax and the costs of administering a tax? I've never had anybody suggest that what you're suggesting would be a better way to do it. But if the committee thinks that's a better way of doing it, that's fine with me and I would go with that methodology if you want to shift the balance in terms of practicality versus exactitude or fairness.

SENATOR LOUDEN: Well, what I'm...just as I look at this, this would probably undo a lot of work that we've done because this does not reward any conservation of water at all because it doesn't have anything to do if you're pumping

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 18

LB 930

less water, you're going to pay just as much on that irrigated ground if you water it once during the year or if the circle pivot sits there and never turns a wheel, rather than if you were using water, you could use, you know, whatever...if there's...whatever the restrictions allow you to use. And if there are no restrictions, you could pump as much as you want. So I don't see where this will help conservation any in this. That's the reason I question by a flat statewide fee of certain dollar per acre as, you know, completely unfair. And there's no way of rewarding conservation in the process. Whereas, if there was a fee on a per gallon basis or something, if you didn't pump, you didn't pay nothing. And if you pump...if you grew crops that only needed water part time of the year, you would be a way of conserving water. That was my question of it and otherwise I thank you for bringing this forward. I'm sure I agree with you that something needs to be done.

SENATOR BEUTLER: Yeah. Senator, let me say this. I appreciate your comments with regard to setting up incentives for conservation. I think you can do that in a couple of different ways. One of them is the way you suggested. And if this committee wants a water fee set up on the basis that you describe that works fairly, I would be willing to put the time in, you and I working to put that together to do it. It can be done in relatively short order. Another method for doing it would be simply to give DWR the power to vary the fee for purposes of encouraging conservation. And that language would be easy to put in. I hope the committee, and I don't want to...I don't want you to misunderstand what I'm saying, I hope the committee will not get bogged down in details. I, more than anyone, appreciate details and I hope you'll give all the input necessary to do all the details necessary to get it right. But this situation is so critical and the importance to the urban population to see that people out there are really trying and struggling to get their hands on this is critical. And this kind of a conservation fee is I think important to that effort. And addressing the problem now I think is extremely important to the effort. I hope you will not let another year go by. And, Senator, I will put in all of the time that you or others may require to get this right if the committee has the will to do it. That's the important question, does the committee want to do this? And if you do, we can get it right in short order.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 19

LB 930

SENATOR SCHROCK: Senator Kremer.

SENATOR KREMER: Senator Beutler, I didn't know whether to speak or not, and I have so many questions I don't know how to phrase them all. But I do agree with some of your premises and I think the time is now and I agree with that. And I appreciate you bringing forth an idea. That's where you start. And if it doesn't work, you go somewhere else, but that's where you learn. I was trying to get a handle on the cost to the irrigator. Is it because he's been the beneficiary of the irrigation or is it because he's been the problem? I'm trying to think, because only the irrigators has not only benefited from this. Our whole economy of our whole state has too. And I think you would agree that agriculture land carries a pretty good burden on property taxes and really subsidize our schools at a lot higher amount than what anyone else does. And it seems to be out of balance. To put another tax on something that the whole state benefits from so much, and I think you've seen the report in the last few months of about \$4.5 billion I think to the economy of the state that have benefited from it too. And I think the drought somewhat has been a problem, which is unfortunate. I think from 1980, and I know in our area our water table actually raised from 80 to 2,000. Then we have conservation practices we've tried to encourage. Now we have less runoff so that's something that we've been trying to do, then it's kind of a problem. But I have a hard time thinking that when so many people benefit from this and from the burden that agriculture already has with taxing that this is the way to go. But I don't have a lot of other solutions, though, either so I appreciate you even bringing this. But do you feel like the tax, or whatever you want to call it, is because agriculture has benefited or the irrigators benefited from the irrigation or it's because he's the cause of the problem?

SENATOR BEUTLER: Senator, as you know, I don't totally disagree with you in terms of some of the adjustments that need to be done with respect to the farmer and agriculture. I have been on your side every time you sought to lower property taxes because I think that's relatively unfair to farmers. Long before you were even in the Legislature, I was working with Loran Schmit on ethanol plants and things like that that, in my mind, truly, truly help the farmers.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 20

LB 930

But when it comes to regulatory programs, I've consistently argued and I think the best government is government that puts the tax as close as possible to who is benefiting and who causes the money to be spent. And by doing that, one of the benefits of that is that people keep a close eye on how much government money is spent. If you're paying for things with a conservation fee and those conservation fees, for example, are used to buy permanent easements, and they're used to buy, in this particular year, conservation easements in a certain area of the state, you can bet that all people paying the irrigation fee are going to be watching closely how that money is spent, where it's spent, and that not too much is spent for what is acquired. Whereas when something changes to general funds, not only does it move away from taxing those who have benefited most, but I think the scrutiny disappears as well to some degree. And so I have argued consistently whether it's an urban thing or a rural thing that with respect to the cost of irrigation or the cost of regulation, whatever the regulated group is, it makes sense that they bear at least a part of the burden of financing that regulation.

SENATOR KREMER: And I appreciate that and I understand your thinking. But if we do take land out of irrigation, we're also going to hurt communities. I think we talk about the decline in population and many other things in our rural Nebraska. If we would not have irrigation, I can't even imagine what the decline would be like because...

SENATOR BEUTLER: But, Senator, what...

SENATOR KREMER: ...irrigation has been very beneficial to our own state. And I think if you would multiply the turnover, the machinery costs and we pay taxes on the irrigation equipment and then the land value goes up so it's more property tax so we really pay a pretty good fee on irrigated ground already. And I understand your and I appreciate your thinking about this. We do have one cost already that makes us pay real close attention to conservation of our water and everything and that's the cost of the equipment in pumping water and our fuel costs. There's not very many people that aren't trying to just...in fact, I think we've seen some irrigation land that's probably put on half or two thirds of the normal amount still got a good crop and things like that really do cause

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 21

LB 930

us to be conservative and we continue to try to do that. So to just put another \$2.00 I don't think that's going to help conservation of water. I'm not sure it's going to help any more than what our costs are for pumping and irrigating that we're already trying to do that. But I appreciate what you're trying to do and it's an idea to come forward. And I'm trying to mull it all over and see. But I know that more than just that irrigators benefits from irrigation, too, by a tremendous amount. Thank you.

SENATOR SCHROCK: Senator Stuhr, did you want to ask a question?

SENATOR STUHR: Actually, Senator Kremer addressed many of the same concerns that I had. I'm sorry I missed your opening, Senator Beutler, and I do thank you for bringing, you know, this idea because I do think we need to look at as many ideas as possible. However, again I just wondered if you were aware of the high property tax situation Nebraskans are in already compared to our neighboring states. And I hope that, you know, that is an important consideration. So...

SENATOR BEUTLER: Okay, and I...

SENATOR STUHR: ...and I'm not...

SENATOR BEUTLER: ...those are all important considerations. And, you know, what this committee has to ask itself is where \$125 million is going to come from because under our legal agreements with other states, you know, we have to do this.

SENATOR STUHR: Okay, thank you.

SENATOR SCHROCK: Other questions? Senator Smith.

SENATOR SMITH: I mean I think it could be argued that already a general fund expenditure based on the way we fund our schools and based on the fact that irrigated land pays much higher property tax...I mean a general fund expenditure would already truly be on the backs of property owners and especially those who are paying taxes on irrigated land. Would that be accurate?

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 22

LB 930

SENATOR BEUTLER: I'm sorry, Senator. I was thinking of one part of what you were saying and I wasn't...

SENATOR SMITH: Well, the way we fund our schools, which is the largest use of property tax dollars, and the way we levy our property taxes on market value and irrigated land has greater market value so I mean they're paying those taxes already. And, you know, our state aid coming from our general fund is, at least indirectly, based on property taxes generated at the local level and more of those come from irrigated land than, say, dryland or otherwise. So my argument is that already it can be argued pretty significantly that irrigated land or irrigated landowners are footing a large part of any general fund expenditure.

SENATOR BEUTLER: Well, as you and I know, we, and the Legislature as a whole, have gotten into long and tedious arguments about the relative fairness of different taxes. Some of my colleagues in the city would argue that farmers pay very little in income taxes. I'm not included in the group, but many in the Legislature would prefer to reduce the income tax as opposed to the property tax and we'll have that debate this year I assume. And I will be on your side, Senator. But this is a different matter to me.

SENATOR SMITH: Thank you.

SENATOR SCHROCK: Senator Beutler, I guess I can't help myself. I've got to make some comments too. First of all, thank you for your interest in the water issues, and I think you've been very productive in the past and it is a serious issue. I want you to know I abhor the thought of the state getting involved in a long-term program. And I don't even like to phrase it the way you phrase it, paying farmers not to irrigate. As you know, we're in a tough situation in the Republican River Basin where we are attempting to buy out some surface water users on a temporary basis. My life would have been a lot easier the last three or four years had it not been for water issues. But we have some overappropriated basins. Mother Nature has not been kind. I think you're aware of the fact that the Water Task Force has recommended that we increase the levy or allow the levy to be increased in the overappropriated basins, which includes the Platte River Basin and the Republican River Basin. And I am carrying that bill which will be heard in

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 23

LB 930

Revenue that would allow them to generate another 3 cent levy for water-related issues. They also recommended that we have a quarter of a cent sales tax statewide for water-related issues. I'm not carrying that bill. I'm not aware of anybody that is carrying that bill. I just don't think that flies very well. And you've heard my speech. I will trade my tax bill as a farmer with any of the surrounding states, bar none. My tax bill in any of the surrounding states would be anywhere from 30 to 60 percent lower. We are the only state in the area that taxes farm equipment in the form of personal property taxes. And let me tell you what that does to you when you develop a quarter of land. Whether it's gravity irrigated or dryland, the minute you put that pivot on there, the county assessor is going to raise your taxes. And you not only get to pay the irrigated taxes, you get to pay the personal property tax on the irrigation system for seven years. And I've introduced a bill to exempt center pivots, but it doesn't work. I annually introduce a bill to do away with personal property taxes. I would be much more amenable to your proposal here today if something like that would happen. But I haven't seen it happen, and I'm not holding out a lot of hope this year. Personal property taxes has driven the custom combine business out of the state. We no longer have custom combiners who live in this state because they don't want to tax their combines here. And when those machines cost \$200,000, \$300,000 and up, why don't you just drive them out. I annually hear people tell me, well, I'm a farmer but I encourage my children not to farm because there's no profit in it and yet we talk about another tax. We need some money, I won't argue with you there. But the agriculture industry is overtaxed and I don't know what to do about it. We're the only state that taxes corn for the purpose of ethanol subsidies. All the rest of the states that do it, do it from their general fund. I'm not complaining because the ethanol industry is important to agriculture. So I don't know where we're headed with this. There's a need for money. But I maintain, and maybe I'm wrong, that the long-term solution to our water problems is not money. It's going to be regulation and it's going to be using good sound judgment and using some common sense. I think Nebraskans are capable of that. So sorry for preaching, but I'd certainly give you time to respond.

SENATOR BEUTLER: Well, I don't know that there's any long

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 24

LB 930

response required, Senator. We've had long discussions before on this. But...

SENATOR SCHROCK: You know, Senator Kremer has a bill this year to tax ag property at 70 percent of market value instead of 80 percent. You know, if something like that could be accomplished, well, then I'd feel more agreeable to something like this. I don't know what the solution is, but we went through a farm crisis. And those of us up here in agriculture, there was some tough times during the eighties and I'm a little scared right now with fuel prices and grain prices being what they are. I'm a little afraid of the future, but we keep moving on. We're going to plant a corn crop this year despite fertilizer prices and despite taxes.

SENATOR BEUTLER: Okay.

SENATOR SCHROCK: But we appreciate your help and we appreciate your insight. With that, I will take proponent testimony. And Senator Beutler, you'll be afforded the opportunity to close.

SENATOR BEUTLER: Thank you.

SENATOR SCHROCK: I will take proponent testimony.

LYNN REX: Senator Schrock, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. We're here today to support the concept of this bill, the concept being that there does need to be money; there needs to be a source for that. We don't...obviously we understand there's work that needs to be done on this issue, as Senator Beutler has discussed and many of you have discussed with him during his opening statements. But we do appreciate the fact that he brought forward an issue so that you could have in your tool chest some considerations here in terms of how to come up with some funding sources. So this is just one idea. We support a user fee type concept. Municipalities want to pay their fair share, so I'm happy to respond to any questions you have.

SENATOR SCHROCK: You didn't spell your name, Lynn.

LYNN REX: Oh, I'm sorry, R-e-x.



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 25

LB 930

SENATOR SCHROCK: All right. And the first name.

LYNN REX: Lynn, L-y-n-n R-e-x.

SENATOR SCHROCK: Thank you. Are there questions for Lynn Rex?

LYNN REX: Thank you, Senator, appreciate your time.

SENATOR SCHROCK: Thank you. Other proponents? Are there opponents to LB 930?

ROBERT HILGER: Good afternoon, Senators. I'm Robert Hilger from David City, Nebraska, R-o-b-e-r-t H-i-l-g-e-r. I'm a farmer from David City and president of Nebraskans First and a board member of the Lower Platte North Natural Resources District. We strongly oppose LB 930 because Nebraska irrigators are already paying through the nose for the right to irrigate. The property taxes we pay on irrigated land as compared to dryland are much, much higher. Compared to surrounding states, our property taxes on irrigated land are way out of line and extremely burdensome. Consider this example: In a 1A1 Class 1 soil, irrigated land just south of Shelton, Nebraska, in Buffalo County is valued at \$2,350.00 an acre compared to \$1,625.00 an acre for the same class of dryland. Real property taxes paid on a quarter section of irrigated land are \$5,414.00 compared to \$3,744.00 for the dryland quarter. The farmer with a well pays \$1,670.00 more than the dryland farmer. Then on top of this, the farmer who irrigates must by essential irrigation equipment such as a center pivot and an engine which adds on significant personal property taxes. An investment of about \$50,000.00 on such equipment would cost the irrigator another \$2,924.00 in personal property taxes over a seven-year period. Then you have to add in the taxes paid for fuel, fertilizer, and other essentials. To irrigate in Nebraska is already extremely costly in terms of taxation. Farmers and ranchers cannot endure another tax. We are paying more than our fair share already, and Nebraska's agriculture-driven economy would suffer if LB 930 becomes law. We ask that you indefinitely postpone any further consideration of LB 930. And I'd like to add a couple of thoughts that I came up with here. It's interesting that the Governor's top priority is to cut taxes and this bill is

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 26

LB 930

a tax increase. And I'd like to remind you that the committee that...it was Senator Beutler who convinced the Legislature back in 1995 that unless you passed LB 108, Kansas would sue. Since then Kansas has sued and our water laws have created a chaotic situation in our state. Are there any questions?

SENATOR SCHROCK: Questions for Mr. Hilger? Bob, I would make some comments here. From my standpoint, LB 108 was a good piece of legislation, was not allowed to be implemented like it should have been. We've got serious water issues in certain areas of this state and it's going to require some legislative help. We passed a very good piece of legislation a few years ago called LB 962. It was supported by 47 members of this legislative body and supported by all the rest of the ag organizations in this state. Your executive director spent a considerable amount of time in the Republican River Basin telling the irrigators down there what a terrible job the Legislature was doing and the Legislature is going to take your water away from you when the real issue was we were trying to reach an agreement with Kansas and trying to solve some of these water issues. Now, Mother Nature has been cruel lately. I don't know if the drought is over. But I, for one, do not appreciate trashing legislation that's been good for water. Certainly you've taken on the chairman of the Natural Resources Committee as someone who is not passing good legislation and I read your newsletters. I've been in this body now, this is the 14th year, and I have yet to see your organization do anything positive for irrigation in this state. I don't see it today. And to tell this committee that LB 108 is a bad legislation bill and we're in a mess because of what the Nebraska Legislature has done is a total, is just a total untruth. And it'd be nice to see an organization like yours do something positive for water in this state. But I, for one, haven't seen it. Thank you for your testimony.

ROBERT HILGER: Can I respond to that?

SENATOR SCHROCK: No, you may not.

ROBERT HILGER: Oh, that's interesting.

SENATOR SCHROCK: Yes, it is. Next person who would testify as an opponent.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 27

LB 930

MARVIN HAVLAT: My name is Marvin Havlat, 1828 Sunrise Road, Milford, Nebraska. It's M-a-r-v-i-n H-a-v-l-a-t. I'm going to take a different approach to this water issue. And I know this hasn't been popular in the past, but I'm going to still hammer away. And I think you people need to take a look at industrial hemp. I think you had the answer three years ago, Senator Schrock. These people out in the Republican Valley could give up irrigation if they were growing hemp, give it up totally, and they'd produce more net energy per acre than they do with corn now. I'm a small farmer and I just got through paying my taxes at the Seward Courthouse. You know, I did exercise farming this year on 500 acres. So all I want to say is there's 50,000 products could be made out of it. Every nation that we have U.S. treaties with grows hemp. There's a web site called hempline that Dr. Hanna can produce at the University of Nebraska; Dr. Russell is interested in it; Dr. Nelson is interested in it. Dr. Dixon went to Texas A&M who specializes in drought resistance in plants, and he was interested in it. I think this state needs to take a long look at saving a lot of irrigation water by growing industrial hemp. This year I got less than an inch in my little valley because I just missed the rain, and my corn was like shriveled, while I look in the weed competition fence row and the hemp is taller than ever. So I think that's all I have to say. I think you would save a lot of water, a lot of taxes, because I think corn, its day has come. And yeah, you need to grow some corn to mix in with the hemp seed oil, but it's too water thirsty of a crop anymore for Nebraska. Thank you very much.

SENATOR SCHROCK: Thank you, Marvin. Are there questions? I don't disagree with you, but we've got this DEA, the Drug Enforcement Agency, that disallows it and it's a federal agency.

MARVIN HAVLAT: Well, the state of Kentucky has passed it and there are several other states have legalized at least studying the crop. I wish you would at least allow the University of Nebraska to at least run experiments on it so they could do it in all parts of the state.

SENATOR SCHROCK: And you know I've had that bill. Senator Kremer.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 28

LB 930

SENATOR KREMER: What kind of a market? Is there a market to...

MARVIN HAVLAT: For this oil?

SENATOR KREMER: ...support how many acres is what I guess I'm thinking.

MARVIN HAVLAT: I think it would far supplant corn as the planted crop in this state in short order because it requires no water. It produces about net ten times as much energy per acre as corn. And you can press the seed through a soybean...

SENATOR KREMER: I understand what you're saying, but I was wondering if every acre of corn was planted to hemp, would there be a market for that?

MARVIN HAVLAT: Yes. You just simply convert it to methanol or you can just convert it to hempoline and we could be selling it here out of the gas stations. You just mix ethanol with it and thin it down. And Dr. Hanna at the university would give you more on that.

SENATOR KREMER: Thank you.

MARVIN HAVLAT: Thank you.

SENATOR SCHROCK: Thank you, Marvin. Next person who would testify in opposition.

MIKE CLEMENTS: My name is Mike Clements, it's M-i-k-e C-l-e-m-e-n-t-s. Senator Schrock and members of the Natural Resources Committee, my name is Mike Clements and I serve as the general manager of the Lower Republican Natural Resources District. I am here today in opposition to LB 930. The Lower Republican NRD has worked hard to be good stewards of our most precious natural resource, water. The good people in the Lower Republican Basin feel strongly about agricultural issues and often express those views loudly. But at the end of the day, we have and will continue to work closely with the Department of Natural Resources to ensure the continued preservation of our natural resources. The Lower Republican NRD, with DNR, has

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 29

LB 930

developed an integrated management plan to reduce consumptive use throughout the Lower Republican NRD. We have stopped new well drilling. We have stopped the development of new irrigated acres and we have implemented strict allocations. This year on their own, our producers have pumped an average of 30 percent below their allocations. Irrigators in the Republican Basin have been hit hard with regulations to comply with our compact and settlement agreement with Kansas. The Lower Republican NRD has the lowest ground water allocation in the state. There are some indications that without the help of Mother Nature, we cannot do enough to comply with the Kansas Compact. In spite of some of the dire predictions, we are committed to trying to find a solution to this...this legislative session because the uncertainty of the situation is stressful to the farmers in the basin. We want more than anything else to have some certainty so that we can plan for our livelihood and the livelihood of our communities. The high cost of fuel, seed, fertilizer, and other operating expenses has hurt farmers in our basin. When land is not farmed and production is reduced, the effects can be felt in our towns and communities across the basin. Just this month, our local implement dealer in Alma closed its doors. We know that something must be done to both conserve water during this continued drought, but we believe that the solution must be comprehensive. We support the work of the Water Policy Task Force to reach a statewide solution, and we are intrigued by the Task Force idea of increasing or earmarking the sales tax by one-fourth cent to address all water issues across the state. We know, however, that any such solution will require widespread and statewide agreement. The Lower Republican NRD understands that in addition to the conservation efforts in place, we need to be part of the solution. LB 971 calls for an additional 3 cents per \$100.00 tax value on property taxes in fully and overappropriated basins. This bill introduced by Senator Schrock would be one way of being able to be part of the solution. We believe that adding a per acre fee in addition to an additional property tax levy is not the right approach, but rather excessive. In the Republican Basin, as in other drought stricken basins across the state, irrigators are currently making sacrifices to meet the settlement agreement with Kansas and to ensure downstream flows. The impact of the drought, riparian vegetative growth, and conservation measures over the last 50 years

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 30

LB 930

have reduced the amount of water irrigators can utilize. The economic result is being felt across the basin. While the area is trying to make it through the drought, let's don't kill it with additional taxation. I urge you not to move this out of committee. Thank you for your time and I appreciate the opportunity.

SENATOR SCHROCK: Thank you, Mike. Are there questions?  
Senator Louden.

SENATOR LOUDEN: Yes. When you say you've cut your allocations 30 percent, how much water do you allow somebody to pump now, how many inches per acre?

MIKE CLEMENTS: Our district is split. The eastern half of our district it's 11 inches per acre and the western half it's 12. And I just got the official numbers yesterday and it looks like we're going to be...come in at about 33 percent under what our allocations were. I guess the thing I want to stress is that people are really trying to take ownership in this and they're doing their part to try and conserve. And I think this last year is a perfect example.

SENATOR LOUDEN: When you say that you come in 30 percent under the 11 and 12 inches?

MIKE CLEMENTS: Um-hum.

SENATOR LOUDEN: In other words, you're down around seven or so?

MIKE CLEMENTS: That's correct.

SENATOR LOUDEN: Okay.

MIKE CLEMENTS: Probably closer to seven and a half or eight.

SENATOR LOUDEN: And how long have you been doing that?

MIKE CLEMENTS: This was the first year of our allocations.

SENATOR LOUDEN: And how long has it been since you didn't allow any more wells to be drilled?

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 31

LB 930

MIKE CLEMENTS: We implemented our moratorium December 9 of 2002.

SENATOR LOUDEN: Okay, about a year and a half ago, three years, not quite three years ago.

MIKE CLEMENTS: That's correct.

SENATOR LOUDEN: Two seasons.

MIKE CLEMENTS: That's correct.

SENATOR LOUDEN: I see. Would...back then could you foresee some problems, then, before you went ahead with some of these allocations? I mean, weren't you having...you're close to that, what's that, Harlan County Reservoir or something down there?

MIKE CLEMENTS: Yes.

SENATOR LOUDEN: I went through there several years ago and that thing was a half, two-thirds dry then and that was before then. Did you do any allocations when you noticed that reservoir was going down?

MIKE CLEMENTS: Actually, in 2002 there was a considerable amount of water in Harlan. I don't think anybody anticipated the length and the severity of the drought. And I mean, you can see it everywhere you go across the state. And that, in my opinion, has a lot to do with the levels in Harlan as well as the conservation practices. You know, what's been put in place over the last 50 years, depending on what study you want to look at, has caused anywhere from 60 to 80 percent of the depletions in the Republican River, conservation practices.

SENATOR LOUDEN: You taught the farmers how to conserve water to farm and they've done a good job.

MIKE CLEMENTS: That's exactly right.

SENATOR LOUDEN: I guess one last question, do you think, then, that there should be a payment to farmers to not irrigate or how...what's your recommendation?

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 32

LB 930

MIKE CLEMENTS: I think it's definitely the only short-term solution. If you want to talk about the current thing that's on the table with the Bostwick water supply in Harlan, I don't see where...I guess we're open to suggestions and if somebody can show us something that's going to do anything in the short term that's going to get us 15,000 acre feet of water, I want to hear it, you know.

SENATOR LOUDEN: Is there enough water left in Harlan to irrigate...to be of any value for irrigation?

MIKE CLEMENTS: Before or after they...

SENATOR LOUDEN: No, at the present time I mean.

MIKE CLEMENTS: I think Bostwick was anticipating around a, and don't hold me to this, but I think they were going to deliver around four inches this year. And of course, if that water is purchased for the compact, why, that won't happen.

SENATOR LOUDEN: Then in order to get the other three or four where you average the nine, you would have had to have some pump irrigation to supplement that water?

MIKE CLEMENTS: That's true. A lot of them, our surface water users have...are ground water irrigators as well.

SENATOR LOUDEN: Now along that questioning or line of thought, if that water is sold or gone or whatever they do with it in Harlan, they don't use it to irrigate, does this mean that those people will pump more out of their irrigation wells?

MIKE CLEMENTS: Well, the allocations, the way that we have them set up, is let's say if you're on the east half of our district and you have 33 inches for three years. And if you get some surface water sometime, maybe you've got a well and surface water both, that's what your total usage is. So we don't let people double dip and pump their surface water and then give them a full ground water allocation in addition to that. They've got 33 inches and that's combined total for surface and ground water both.



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 33

LB 930

SENATOR LOUDEN: What's your average rainfall down there?

MIKE CLEMENTS: In Alma it is right around 22 inches.

SENATOR LOUDEN: What I'm wondering out in the western end of the state where I'm from, why, Pumpkin Creek and some of them are down around seven inches and I think their average rainfall is somewhere around 12 to 14. And I'm wondering where you're getting 22 if what you're trying to do with all the extra juice I guess.

MIKE CLEMENTS: (Laugh) Well, I think if you would talk to farmers down there that they would say that there hasn't been...there hasn't been too much extra water this past year. I mean, they did a good job to conserve. They got by. We got some timely rains.

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Other questions? I might comment, Senator Louden. They sure didn't get 22 inches of rain in 2003. And sometimes rain doesn't do you a lot of good if it all comes the same day. But Mike's been on the job now, what, three or four years?

MIKE CLEMENTS: Almost five.

SENATOR SCHROCK: Almost five, time goes fast. And so he's the third NRD manager that I've dealt with in my time in the Legislature from the Lower Republican, so...but that's not a long time as NRD managers go and so...

MIKE CLEMENTS: No, no.

SENATOR SCHROCK: We appreciate your service and your board's service and tough times, tough issues.

MIKE CLEMENTS: Thank you very much.

SENATOR SCHROCK: Next opponent.

KEITH OLSEN: (Exhibit 5) Good afternoon, Senator Schrock. I am Keith Olsen, president of Nebraska Farm Bureau, and it's spelled O-l-s-e-n. I'm a farmer in Grant, Nebraska, and I'm here today to present opposition and testimony of

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 34

LB 930

the Nebraska Farm Bureau to LB 930. It's already been said a number of times and I cannot reemphasize it enough, we are facing critical issues with our water. And we are finding a hard time to discover an answer to how we fund solutions. Our members have through the years debated this issue many times at our state convention, and our current policy says that we support integrated management and water conservation. We also support earmarking of state tax receipts, general funds, and other broad base sources of income. And we also support that funding should not come from a fee on water use. And in our view, LB 930 is not broad base; it institutes fees on water use, and relies too heavily on taxes on irrigated land. There's no doubt about it. Irrigation uses a large amount of water. And you think, well, it should only be fair that irrigators pay a substantial amount of tax, if this tax is necessary, to implement water conservation, land retirement, whatever. And at first glance that probably seems fair. But I have to ask, who is the ultimate beneficiary of the irrigation in the state of Nebraska? Is it the irrigator or is it the owner of a car that fills it full of ethanol made from irrigated corn that was raised in Nebraska, or is it the person in Omaha or Lincoln that will eat a nice steak tonight that was raised from Nebraska corn-fed beef, corn raised on an irrigated farm in Nebraska? Is it the local school districts that receive tremendous amount of their tax support from irrigated ground? My point is all Nebraskans benefit from irrigation. The Nebraska Policy Institute has conducted a study referenced to earlier by Senator Kremer. And that study showed that in 2003 the increase economic activity due only to the value of irrigation. In other words, if that land would have been farmed dryland instead of irrigation, the difference was \$4.5 billion. Now I heard something on TV this morning I thought was interesting. Texas, I'm sorry, Kentucky, Kentucky was referenced earlier. They're excited because their total ag production in the state of Kentucky is \$4 billion. The value of irrigation alone to the state of Nebraska is greater than all the ag production in Kentucky. If we didn't have irrigation in the state of Nebraska, we would have 45,000 less jobs in the state according to the study from the Nebraska Policy Institute. Look at it another way. We have the University of Nebraska system in Nebraska. It's located in three communities, Lincoln, Omaha, and Kearney. When the University of Nebraska needs extra money, they don't go to

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 35

LB 930

those schools or those communities and ask for money. They go to all the people in the state of Nebraska for additional funds because the whole state benefits from having the University of Nebraska. And it's the same way with irrigation. The whole state benefits. We feel besides the philosophical problem we have with LB 930 that the bill has some practical problems and this was addressed earlier when we asked about the dryland farms, how would they be treated, the rangeland, the industry located outside of the municipalities. And so I think that's the issue that we need to consider also. We talked about conservation practices and how they affect the amount of runoff water, the amount of water in the ground stream. These are issues that, you know, all are part of the problem, a very complex problem. No one denies that. We in general support many of the recommendations that the Water Policy Task Force come forth. They were talking about having \$5.5 million in state funds, \$4 million in local funds to implement some studies and do some additional programming in our local NRDs. Water research is extremely expensive and it does take money. We need to develop an integrated management plan. We need to collect data. And I know that the NRDs, our state administration, Attorney General's office are looking at many of these issues and especially as they relate to the Republican Compact and our issues with Kansas. The Task Force which we generally also support the recommendations that NRDs should be given authority to increase their tax levy, especially the NRDs that are overappropriated and fully appropriated. Irrigated agriculture and many of the NRDs is the largest class of property and, therefore, pay a majority of local taxes. They put the most money into the NRDs today. And this money will be used to increase regulatory costs of implementing irrigated management plans. We've already had metering and we've had to reduce acres. We've had allocations. And these all affect or can affect a producer's bottom line. Moratoriums on new uses mean that a farmer may not be able to use his land for its best use. So we therefore feel that producers should not be asked to inordinately fund needed water programs. We stand here opposing LB 930 and we ask you to indefinitely postpone the bill. I'd be glad to take any questions.

SENATOR SCHROCK: Thank you, Keith. Are there questions?  
How many more opponents do we have?

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 36

LB 930

MICHAEL JACOBSON: You got me.

SENATOR SCHROCK: Okay. We're going to have to speed the proceedings up a little bit. We ask those who want to testify on bills to be sitting in the front row so they're ready to come forward and do so.

MICHAEL JACOBSON: I can walk that far.

SENATOR SCHROCK: Well, then come forward, please. I would remind the committee we're probably going to be here until at least 6:00 tonight so.

MICHAEL JACOBSON: My name is Michael Jacobson, M-i-c-h-a-e-l J-a-c-o-b-s-o-n, from Gordon, Nebraska. I'm a third generation rancher and farmer where my ancestors homesteaded on land that we still have in our possession. In 1996 I come down here and lobbied very hard against LB 108 because this was my biggest fear, that they would start to charge us for our own water. In 1982, the Supreme Court in Sporhase v. Douglas declared that Nebraska's claim to underground water was legal fiction. Mr. Beutler's bill, in his introductory statement of intent he says, resolving conflicts between Nebraska and the other states and developing solutions for endangered species issues on the Central Platte River Basin, some of the people who were for it were the Nebraska Department of Water Resources, Nebraska League of Women Voters, Nebraska Chapter of the National Audubon Society. Those against it was Nebraskans First, which I personally think is a very good outfit. And then there was seven irrigated farmers that voted against it or talked against it. Now what I'm afraid of is, well, let me tell you how LB 108 affected us. We have ground south of Gordon and there's a well down south of the house that's seven foot deep. And in 1956 they started irrigating around us. We have irrigation all the way around us. And I just helped my dad, who turned 83 the other day, pull that well. We pull all our own wells. And the water level has not dropped one iota. If you don't believe me, you can come out and help me pull a well. We also have 80 acres of irrigated alfalfa that's been there for 40 years. We did plow it up because we had to replant it last year. If there was any shortage of water out there, that irrigated alfalfa would have disappeared, but it didn't. Ted Turner realizes what he's sitting on. He's buying all the land on the Ogallala

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 37

LB 930

aquifer so he knows what he's sitting on. So I am totally against this bill. And if you want to tax somebody, tax somebody that was for this bill, not us farmers. And I tell you right now in 1956 or '58 you started making us register for our irrigation wells and then last year or a year ago you said that we had to register for our stock wells. Now if you put a tax on irrigation wells, now I know damn good and well that you're going to put a tax on our windmills at our houses, the wells that are at our houses. So I think this bill is a bad bill and I ask you to vote against it. And I think the people back home are going to be tickled pink that you want to put monitors on all their wells, Mr. Louden. Any questions?

SENATOR SCHROCK: Questions for Mr. Jacobson? Mr. Jacobson, I don't think...I don't doubt you. I would guess your water table has not changed up there.

MICHAEL JACOBSON: I can guaran-damn-tee it hasn't.

SENATOR SCHROCK: But I will tell you this. In other areas of the state, the issues are different.

MICHAEL JACOBSON: I don't know.

SENATOR SCHROCK: And I would guess LB 108 was never implemented in your area of the state. It was stopped in most areas.

MICHAEL JACOBSON: But LB 108 is what...they put a moratorium on our wells. We cannot drill any more irrigation wells out there. And our water table has not dropped one iota. That's what it's done for us. And I think if you go back and look at the maps that the U.S. Geology Society did way back in the thirties, there are dry areas in this state. Now north of Rushville up in the Pine Ridge country, we've got land, be kind of called the Badlands, we're 385 feet deep there. The problem here is, and I've got a case right back there, the Spear T Ranch, that's in litigation right now in the Supreme Court down here is that the water is not always integrated. It's not, you know, isn't connected. And the Supreme Court in that decision right back there says it's not because there is no water stream that they can follow. It's bad science.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 38

LB 930

SENATOR SCHROCK: Thank you for driving all the way down from Gordon, sir.

MICHAEL JACOBSON: I'm going to be back up here in a minute and you'll probably throw me out on that one so.

SENATOR SCHROCK: No, we won't do that.

MICHAEL JACOBSON: Thank you.

SENATOR SCHROCK: Is there another opponent? Is there neutral testimony?

ROBERT HALLSTROM: Chairman Schrock, members of the committee, my name is Robert J. Hallstrom, that's H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association. The reason I appear in a neutral capacity is because our policymaking board at the NBA has not yet convened to take a formal position on LB 930. But I have canvassed the members of the NBA water policy task force that was formed approximately two years ago and was unable to garner any level of support for the concepts embodied in LB 930. We believe that...my comments probably will be slanted towards the negative neutral approach here today, but we believe there's a statewide problem that calls out for a broadbased solution. We acknowledge that they are serious problems, and we acknowledge the work that this committee and committee counsel and the Legislature have taken on the water law issues in the past and appreciate those. Those problems are going to require innovative solutions. We do appreciate the opportunity to discuss these types of proposals as possible solutions, but it's highly unlikely that we'll be able to rally support around this proposal and will likely be opposed to it once our policymaking board convenes. Be happy to address any questions.

SENATOR SCHROCK: We appreciate your negative neutral testimony, Mr. Hallstrom.

ROBERT HALLSTROM: Thank you, Senator.

SENATOR SCHROCK: Are there questions?

ROBERT HALLSTROM: Thank you.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 39

LB 930, 805

SENATOR SCHROCK: If not, I do have letters to read. One is from the Nebraska Cattlemen in opposition to LB 930 (Exhibit 6), and one is from the Nebraska Association of County Officials and I guess I would consider that a neutral testimony at this time (Exhibit 7). If there are no other testimony on this bill, Senator Beutler, you are afforded the opportunity to close.

SENATOR BEUTLER: I think I'll just waive closing, Mr. Chairman, unless there are questions.

SENATOR SCHROCK: Questions for Senator Beutler?

SENATOR BEUTLER: Perspectives have been expressed.

SENATOR SCHROCK: Thank you. In light of a development, we're going to take a five-minute break. And it's going to be no more than five minutes.

BREAK

LB 805

JODY GITTINS: Good afternoon, Chairman Schrock, members of the committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I am introducing LB 805 on behalf of the Natural Resources Committee. LB 805 is a bill that was drafted in conjunction with the Fiscal Office. The recommendation of the Fiscal Office was that in order to have a separate item in the Department of Natural Resources' budget, we needed a program. This creates that program. It's a funding of natural resource districts for duties under the Nebraska Ground Water Management and Protection Act. The program status enables a single budget state line item for ongoing appropriation purposes. The program will function as a grant program for disbursing the necessary funds from whatever the source may be. While administratively under the department, the program is solely under the direction of the Natural Resources Commission. The Commission will look at the funds, look at the grant applications, and make its recommendations then to the director for disbursement of those funds. It's strictly, as I said, to set up a program within the department to be

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 40

LB 805

funded by a general fund appropriation from the Appropriations Committee, whatever that sum may be. There is no fixed sum for the program. Senator Schrock has a companion bill introduced in...before the Appropriations Committee that is requesting a \$10 million appropriation to be placed in this program.

SENATOR SCHROCK: Questions for Jody? Senator Stuhr.

SENATOR STUHR: And what will these funds be used primarily?

JODY GITTINS: They'll be used for studies for implementation of any ground water management plan under the integrated management plans that they...that are developed conjunctively between the NRDs and DNR to implement the processes that are necessary under LB 962 in overappropriated, fully appropriated basins that need help to determine what their water uses are, how they're standing up to ultimately meet the goal that the Water Policies Task Force set which was sustainability of our water.

SENATOR STUHR: Right. Is Senator Schrock's companion bill, is this a one-time asking of \$10 million?

JODY GITTINS: Yes, and then it would become a line item budget each year for the Governor to put in his budget and for the Appropriations Committee to look at that DNR would then place a request in for funding each year.

SENATOR STUHR: Right, but it may not be at that amount?

JODY GITTINS: That's correct.

SENATOR STUHR: Just looking at the needs?

JODY GITTINS: Right.

SENATOR STUHR: Thank you.

SENATOR SCHROCK: ' Senator Smith.

SENATOR SMITH: So are there any limitations to what the dollars can be spent on?

JODY GITTINS: For the integrated management programs.



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 41

LB 805

SENATOR SMITH: That's as specific as it gets?

JODY GITTINS: That's it. That's as specific as it gets.

SENATOR SMITH: Thank you.

SENATOR SCHROCK: Other questions? Jody, if I might comment also, we've actually been doing this. We just really haven't had a program to channel the money through.

JODY GITTINS: That's correct.

SENATOR SCHROCK: And so the funding of LB 962 of the Water Task Force activities would all be channeled through this type of appropriations. And I think the Natural Resource Commission would determine where the money would go to but I think it would be pretty well spelled out for them by the legislative directive, and for them to vary from that would be probably a breach of faith with the legislative body and the citizens of this state. So I don't think that's an issue. But we've actually been doing this but we really haven't had a good mechanism to do it. So this has been recommended to us by the Fiscal Office and that's the purpose of the bill.

JODY GITTINS: Thank you.

SENATOR SCHROCK: First proponent? Maybe we didn't need to hurry up, hurry up the last one. We could still be talking about water fees. No proponents. Is there opponents? Is there neutral testimony? I see we have the director of the Department of Natural Resources here. It would be a shame not to hear from her. Ann, would you approach the...state your name and spell it for us.

ANN BLEED: My name is Ann Bleed, A-n-n B-l-e-e-d, and I am the acting director of the Department of Natural Resources.

SENATOR SCHROCK: Would you care to comment on the legislation or how we've been doing things now and how this would change?

ANN BLEED: Well, the way we've been doing things now is basically the department has distributed the funds with

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 42

LB 805, 933

input from the Water Policy Task Force. The...this, I think, would be a welcome change in that the funds for working with the natural resources districts would go through a process that would be more than simply the department making the decision on how those funds would be used. I guess the other comment I would have, I think our resources development funding process has on the main been working fairly well. And I would suggest that probably the rules that we used for distributing those funds would...could be adapted for distributing the funds in this case. The one thing I would say is there will be needs, I think, for the department to be doing studies for the determination of which areas are fully appropriated. And that would not necessarily be the integrated management planning aspects itself, and I would guess those funds would be different and I think those funds need to be under the auspices of the department to determine how they should be funded.

SENATOR SCHROCK: Thank you. I hope that helps to clarify the situation. Do you have any questions?

ANN BLEED: Thank you, Senator.

SENATOR SCHROCK: If not and we're going to waive closing on LB 805. That will close the hearing on LB 805. And we'll open the hearing on LB 933. And while Jody is taking a seat, I will tell you that the Natural Resources Commission is made up of 16 members, 13 that are designated from each water basin and three appointed by the Governor to represent municipalities, ground water, surface water. Chairman of the committee is my former football coach, Jim Van Marter, from Holdrege.

LB 933

JODY GITTINS: Good afternoon, Senator Schrock, members of the committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the Natural Resources Committee introducing LB 933 on behalf of the committee. LB 933 started out as the...what we called in the Water Policy Task Force the nits and nats of fixing LB 962. It was strictly going to serve as a methodology where we could go in and correct statutory references,

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 43

LB 933

delete obsolete references, changing some wording for clarification purposes, basically a cleanup bill. In the process...in the LB 962 process, we took a look at the municipal concerns and a subcommittee was formed in the Water Policy Task Force to deal with the municipal concerns regarding LB 962 and water apportionment. Their recommendations were included in LB 933 as an official recommendation of the Water Policy Task Force in total. Also, there were some transfer concerns that were raised. Those were also incorporated by the recommendations of the entire Task Force into LB 933. You have before you the introducer's statement of intent which was rather lengthy but the bill itself was rather lengthy. And I wanted to give you as much information as possible in that statement of intent. There are many people who can testify as to the specific nature of the municipals--that will take place after my introduction--to the water transfers, to the clarification of how surface irrigation nonuse is addressed by the department, and other specific information regarding this bill. I'm not going to read to you the entire statement of intent. I think that this committee knows the ins and outs of LB 962. Many of the committee members have attended the LB 962 meetings, the Task Force meetings that have been ongoing and will continue into the future. After my testimony, the acting director, Ann Bleed, will testify as to the department's concern. After hers, Dave Cookson representing the Attorney General's office will testify to the committee as to their perception of what was needed. And after Dave, Don Blankenau, who represents the League of Municipalities, can talk in-depth about the agreements that were reached regarding the municipal use and how the dates, the figures, the amounts came into being and were agreed to by the Task Force in total. I'd be happy to try and answer any questions, but I really think that the people who are following me have much more technical information that would be helpful to you.

SENATOR SCHROCK: That's her kind way of saying don't ask me questions, I guess, so.

JODY GITTINS: No.

SENATOR SCHROCK: Committee have questions for Jody? Okay. I will take testimony in this order. We will start with Ann Bleed as director of the Department of Natural Resources;

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 44

LB 933

and the next one will be Dave Cookson, Attorney General's Office; and then we'll go with Don Blankenau who will be representing the League of Municipalities.

ANN BLEED: Good afternoon, Senator Schrock and members of the committee, my name is Ann Bleed, that's A-n-n B-l-e-e-d, and I am the acting director of the Department of Natural Resources. I am here to present testimony on behalf of the Department of Natural Resources regarding LB 933. Since the effective date of LB 962, the department, irrigation districts, natural resources districts, and others have noted the need for a number of corrections and clarifications in several of the existing statutes within the jurisdiction of the department, primarily the statutes that were adopted in 2004 as LB 962. The surface water rights and ground water rights subcommittees of the Water Policy Task Force met numerous times and developed the proposed recommended cleanup amendments that you see before you. These amendments were reviewed and unanimously approved by the entire Water Policy Task Force. As Senator Schrock's aide, Jody Gittins, stated the changes in Sections 2 thru 16 of LB 933 are the cleanup amendments recommended by the Task Force. The only comment I would add is that there is an amendment that changes the definition of best management practices to include practices that conserve the quantity of water as well as the quality of water. Section 17 of LB 933 is the result of the work of the Water Policy Task Force's municipal subcommittee. If you recall in 2005, Senator Kremer introduced LB 708 which provided for an exception to the stays that applied in fully appropriated and overappropriated areas of the state for domestic uses and to further provide that no person would be required to mitigate or offset consumption resulting from domestic uses. LB 708 was indefinitely postponed, in part to give the Water Policy Task Force the opportunity to examine the issue and have input on the problems it sought to address. Over the course of the last several months, the Water Policy Task Force municipal subcommittee, working with the League of Municipalities and a number of other municipalities, irrigation, and natural resources district managers, and other interested parties developed a solution to the issues and concerns LB 708 sought to address. The Department of Natural Resources took part in these discussions. The resulting subcommittee proposal was presented to and approved by the full Water Policy Task Force. The proposed

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 45

LB 933

amendments to the statute found in Section 17 of LB 933 provide an exemption with certain exceptions from allocations imposed after November 1, 2005, for municipalities and nonmunicipal, commercial, and industrial users. To qualify for an exemption, any city of the metropolitan class, or city of primary class, or secondary class shall, if required by the Integrated Management Plan, file a conservation plan with the natural resources district. Under the exemption, a municipality that does not have an allocation in place as of November 1, 2005, may have as its minimum annual allocation the greater of either the amount of ground water authorized pursuant to a permit issued by the department or water for governmental, commercial, or industrial uses plus a per capita allowance. The per capita allowance would be based on location and would range from not less than 200 gallons per capita per day in the eastern part of the state to not less than 250 gallons per capita per day in the west. Prior to January 1, 2026, the consumptive use of water by a municipality that results in a decrease in stream flow would not be required to be addressed by the municipality but would need to be addressed by the Integrated Management Plan pursuant to controls or incentive programs. However, any single new or expanded commercial or industrial development with a consumptive use of water in amounts greater than 25 million gallons per year may itself be subject to controls adopted pursuant to 46-715 of the Integrated Management Act. To help offset depletions caused by new municipal uses before 2026, permanent reductions in the consumptive use of water associated with municipal growth between the effective date and January 1, 2026, will accrue to the benefit of the natural resources district that the municipality is in. After January 1, 2026, the allocation to a municipality cannot be less than the greater of either the amount of water authorized by a permit issued by the department or the greatest annual use prior to January 1, 2026, for governmental, commercial, and industrial uses plus the per capita allowances previously described. Additional increases in the consumptive use of water above the allocation that result in a decrease in stream flow shall be subject to the controls and incentive programs adopted in the Integrated Management Plan. Nonmunicipal and commercial and industrial users are provided a similar exception from allocations until January 1, 2026. This morning at the request of the Nebraska Public Power District several

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 46

LB 933

members of the municipal subcommittee agreed to several amendments to the proposed bill, and I will ask Don Blankenau when he speaks to address those specific members...those specific amendments. I thank you and I would be happy to try to answer any questions you may have.

SENATOR SCHROCK: Thank you, Ann. Senator Stuhr.

SENATOR STUHR: Thank you, Ann, for your work that you have...

ANN BLEED: Thank you.

SENATOR STUHR: ...provided to the Water Policy Task Force, and is there's some reason that 2026 was selected?

ANN BLEED: The discussion was that a 20-year period would give cities enough time to develop their resources but would not be such an open-ended period of time that it would be a burden to the natural resources districts and DNR that have to be responsible for offsetting any new uses of water.

SENATOR STUHR: Okay. Thank you.

SENATOR SCHROCK: Other questions? Thank you.

ANN BLEED: Thank you, Senator.

DAVID COOKSON: Senator Schrock, members of the committee, I'm David Cookson, C-o-o-k-s-o-n. I'm with the Attorney General's office. I'm primarily here today in my capacity as chairman of the municipal...the Task Force municipal subcommittee. Many of you were present at our meeting in February last year when LB 708 came up for discussion and there was a rather universal reaction to that proposed legislation. Roger Patterson and I suggested that it would be appropriate for the Task Force to take up this issue because there were legitimate concerns raised by the municipalities in terms of their concerns and their needs, and obviously, economic development is a key goal of everyone in the state to protect our vitality. And unfortunately for me at the next meeting, I left the room at an inopportune time and came back to find myself as chairman of the subcommittee to work on this issue. And so in that capacity, I'm here today. I'm really here to talk more

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 47

LB 933

about the process and Don Blankenau will address the specifics of this compromise. But it's important to note that the League of Municipalities, their staff, several of the city managers or representatives or the people in charge of the water departments put forth a lot of time and effort into coming up with a reasonable solution that fits within our Integrated Management Plan scheme that this Legislature adopted as LB 962 and yet provides for the goals of growth and economic development for the cities without placing undue burden on the other water users who would have to account for water use in a fully or overappropriated basin. I think also to be thanked are the folks on the muni...from the Task Force who served on the committee, both from the NRDs, from the irrigation districts, and the power districts, and of course legal counsel for the League of Municipalities, Don Blankenau, who is the primary drafter and author of the legislation you have before you. We really, much like the Task Force, found out what the real concerns and real issues of the municipalities were, which is having a...the ability to know that they have water and that water is available to them. And municipalities are in a unique situation as a water user. An irrigator can go from irrigated to dryland if they have to. A power company can find other sources of water. Municipalities have to serve their systems and they have to be able to serve the people that they serve. And so this is really an attempt to provide them the security of water that they need and also, at the same time, balancing it against the needs of other existing water users. And also again, economic development and growth was the other key issue and so we think that this proposal addresses those. And as the Task Force municipal subcommittee chair, would urge that you adopt this piece of legislation.

SENATOR SCHROCK: Thank you.

DAVID COOKSON: And with that I'll take questions.

SENATOR SCHROCK: Thank you, Dave. Questions? Senator Stuhr.

SENATOR STUHR: I noticed that to begin with some of the municipalities, and there is a designated line, are allowed 200. Is it 200 gallons per person? And then those in the western part, why are they allotted more, 250 minimum...

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 48

LB 933

DAVID COOKSON: Right.

SENATOR STUHR: ...why...can you explain why that is...or maybe the question might be better addressed to someone else?

DAVID COOKSON: The general idea is as you cross over for that particular meridian. You go from one climatic condition to the next gradation, drier. And so in some...generally, the numbers bear out that the folks in the western, even for municipal uses, just as they do for agriculture, have to use more water...need more water. And I think Don can address the specifics of that because the League...we as a task force asked the League to give us the information so we could make a reasoned and informed decision and I think Don can address the specifics of it.

SENATOR STUHR: Thank you.

SENATOR SCHROCK: Other questions?

DAVID COOKSON: That's got to be the easiest time I've had here. (Laugh)

SENATOR SCHROCK: Dave, thank you for your services to the Task Force and the state of Nebraska.

DAVID COOKSON: You bet. Thanks.

DON BLANKENAU: (Exhibit 8) Good afternoon, Senator Schrock, members of the committee. My name is Don Blankenau, first name is spelled D-o-n, last name is B-l-a-n-k-e-n-a-u, and I'm here today on behalf of the League of Municipalities. You know, the other two testifiers, Ann Bleed and Dave Cookson, really have made my job pretty easy and certainly Jody did with her lead-in. I think among the three of those this is going to be the easiest testimony I may have had too. But don't take that as a challenge, please. This bill, I think, really, as the other testifiers indicated, arose from concerns of fully and overappropriated basins and specifically, and you probably all know this, when a basin is designated as being fully or overappropriated, the total volume of water that can be consumed within that area is fixed in time. That is, it can



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 49

LB 933

never be increased. So what you have is a situation where if new uses are to develop some existing uses must decline. And that created a level of uncertainty. Also, when a basin is designated, there is an automatic stay that goes into place that does not allow municipalities to drill new wells to serve perhaps new users. And the same would be true for industrial users located outside of municipalities. So with that situation, you had the concern arise, and there are actual cases where this occurred, where industries would seek to locate in a particular community and the community was unable to give them the assurance that the water would be available for them when they needed it. And as a result, there was somewhat of a chilling effect in some of the economic development. So last year, as Ann Bleed indicated, Senator Kremer was good enough to introduce a bill that kind of got the discussion rolling here and at the urging of this body, the Water Policy Task Force took a look at the issue and thankfully came up with what I think was a pretty good solution that is consistent with LB 962 which was passed a couple of sessions ago. And I should mention, too, I would be remiss at this, that this effort was really a good example of collaboration among the League members and Water Policy Task Force. The discussions were numerous. We extended throughout the summer and fall. They were very frank and sometimes heated discussions. But I think that at the end of the day, all the parties were very pleased with the solution and that's really a credit to all of those who participated. The substantive provisions of the bill are really pretty simple. What the bill does is it establishes a minimum allocation for each community through 2026 or up to 2026, and those allocations can change over time. The allocations, though, allow for most governmental, commercial, and industrial growth through that time period plus a per capita allowance. Senator Stuhr, you asked a question about the per capita allowance and why that changed and Mr. Cookson was correct. The reason that it changes is because of climatic conditions. The far eastern end of the state it rains a lot more and people don't water their lawns as much or need to use as much water generally as they do in the west. And the 200 to 250 was really just a negotiated range. And depending on where your community is located longitudinally across the state, you would get a corresponding number to go with your commercial, industrial, and governmental uses. What LB 933 does, then, is allow communities to represent to potential businesses and

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 50

LB 933

industries that the water will be available should they choose to locate there, with one exception, and you need to be aware of this, and that is for uses that consume in excess of 25 million gallons annually. I want to emphasize that that is actual consumption, that is not the amount pumped. And in many cases, many industries use a good deal of water but return a high percentage of that water back to the system. So we were very specific in that language. We looked at that 25 million gallon number to see what industries it would actually affect and we were able to identify three specifically of note; one, our livestock slaughter facilities, the second would be ethanol plants, and thirdly, wet corn milling. Those are all facilities that routinely will use in excess of that 25 million gallon number. And what that means is if you are going to develop a new plant, any one of those particular industries, it is likely that the NRD will need to consider whether to require offset. The NRD is not required to do that, but they have that option to require offset for the full amount if they so desire. What that means to the industry, then, is they can work with the NRD if the NRD so chooses or the industry itself may have to go out and simply purchase an existing use and place that use out of existence before it begins consuming. For most of those facilities, however, if they are going to continue their existing operations, LB 933 should insulate them from any harm so they can continue their operations as they have. LB 933 also allows NRDs to give allocations that are larger than these minimums if they so choose. In fact, a couple of NRDs have been pretty adamant that they want to give larger allocations than are required by this legislation, and we were very specific in the bill to try to ensure that NRDs retained that authority as well. I should note, though, that before any community can take advantage of the protections contained in this bill they must file a conservation plan with the natural resource district where they are located. Those are not all cities. They are cities just of the second class and larger. It's believed that the smaller communities are such minuscule users that a conservation plan really is of no value. Finally, I would note that whenever a city or industry conserves water as a result of their growth, for instance, if a city were to grow into an area that is presently being irrigated and they place that irrigation use out of existence, that credit for the conserved water would accrue to the benefit of the natural resources district. That way

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 51

LB 933

the natural resource district gets something in exchange for the concessions that they made in this bill and has water that they can then apply towards the city use or elsewhere if they desire. One final item, as was mentioned by Ann Bleed, there was an effort, and by Jody, an effort to try to harmonize the provisions between the municipal uses and the nonmunicipal portions of this bill. As it was originally written, the language didn't track identically and the goal and objective was to treat municipalities the same as those industries that are located outside of municipalities and have their own wells. So we've prepared some amendments this morning, we were...by telephone prepared this largely at the request of the Nebraska Public Power District and I have that amendment for you as well and it is just harmonizing language. With that I'd be happy to entertain any questions.

SENATOR SCHROCK: Thank you. Senator Kremer.

SENATOR KREMER: I'm probably going to show my ignorance but I'm trying to read through this and when it talks about a minimum amount of 200 that means that they would be guaranteed at least that much? Would there be a time when they'd be allocated something more than that or could or what would be the instances where they could do it?

DON BLANKENAU: The NRDs can give more than that if they desire.

SENATOR KREMER: What would be a scenario that...where they would be allocated more?

DON BLANKENAU: I would say it depends on the particular NRD and I will use the example of the Middle Republican NRD, for instance, where they have given allocations of 700 gallons per person per day. And they did that based largely upon existing uses as I recall their process. They simply chose to tally up the per capita usage of every community within their NRD and then to treat every community the same way. They just averaged it out. And that's the number that came out.

SENATOR KREMER: So they would be able to do that but they would be...at least the municipality would be guaranteed the 200 and 250...

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 52

LB 933

DON BLANKENAU: Right.

SENATOR KREMER: ...and that's why it says the minimum on there.

DON BLANKENAU: Correct. So an NRD could go down to 200, not below that. But if it was in their interest to go higher, they could do that.

SENATOR KREMER: Okay, and then you kind of answered my other question talking about accrued. If they used less than that, it would be like a water bank that they could then allocate that to someone else because it would be in their bank.

DON BLANKENAU: Correct. And I should mention that the principle behind LB 962 is to maintain the water use where it is. So if a city is going to grow, that means the NRD still has to come up with some ability to offset that water.

SENATOR KREMER: So that water could be used to offset some other purpose that somebody was asking for more water then?

DON BLANKENAU: Correct. And it could be an irrigator if that's what the NRD desired.

SENATOR KREMER: Thank you, Don.

DON BLANKENAU: Thank you.

SENATOR SCHROCK: Other questions? Senator Stuhr.

SENATOR STUHR: You mentioned this 25 million gallons and then you listed livestock slaughter, those are not...I don't see those particularly mentioned in the bill.

DON BLANKENAU: No. And it's possible for those facilities to operate under those amounts, but we did a little survey to see which industries would be affected by that number and those were the only three that we found.

SENATOR STUHR: All right. Thank you.

SENATOR SCHROCK: Other questions? Don, it's safe to say

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 53

LB 933

that the cities aren't using that much water now, the 250 gallon, they're not...

DON BLANKENAU: Most of them aren't. There are a few though, Senator, that are. I'm kind of at a loss to say which ones now, but there are a couple that are using over 400 gallons. One in particular that I can think of is Henderson, which I believe is around 450 gallons. They are part of the Upper Big Blue NRD which has allocations in place and ready to trigger which would take them down. And this legislation protects the Upper Big Blue in that instance so they would have to ratchet down their use. But you're correct, Senator, most of those cities are below that.

SENATOR SCHROCK: Just a little editorial here. Certainly most of us on the Task Force were either irrigators or represented irrigated interests and it was never my intent or anybody else's intent to cause harm to municipalities and to ration their water supply. And so if this piece of legislation corrects that, why, that's a good thing. And so we recognize that agriculture uses most of the water, irrigation, and that municipalities is just a small piece in that and to limit them would be economic folly, particularly for economic development issues, so. Senator Stuhr, do you have a question?.

SENATOR STUHR: Well, I just had a comment in regards since Henderson is in my district. I do know, and I'm not sure that they were aware of actually how much water they were using, but they're talking about putting meters on.

DON BLANKENAU: That's exactly why they are talking about doing that, Senator.

SENATOR STUHR: Yes.

DON BLANKENAU: But within that same district, you have other communities that use much less and there's a great deal of variation. Senator Schrock, I want to thank you as well for your leadership on this and, of course, Jody was very helpful and we appreciate your hard work.

SENATOR SCHROCK: Senator Kremer.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 54

LB 933

SENATOR KREMER: Well, just one other comment, I think this is good reasoning for keeping the Water Policy Task Force intact because this was something where a lot of people worked together on something that have the interest in irrigation, municipalities, and everybody comes together with a solution. That's a way to do it, rather than just somebody come up with an idea, so. Besides this is Schrock's bill and the other was mine so it makes a tremendous amount of difference. His always fly. (Laugh)

SENATOR SCHROCK: I'm sorry, I should have let you introduce it.

SENATOR KREMER: No. No, I think it was done the right way that the Task Force look at and I think that's good reason to keep it intact.

SENATOR SCHROCK: Thank you, Don.

DON BLANKENAU: All right. Thank you.

SENATOR SCHROCK: Other proponents?

DAN CROUCHLEY: Senator Schrock, members of the committee, my name is Dan Crouchley, D-a-n C-r-o-u-c-h-l-e-y. I'm the senior vice president and general counsel at Metropolitan Utilities District in Omaha. I'm also a member of the Water Task Force and was also on the subcommittee for both the Task Force and the League, so I listened to both sides of the discussions. MUD supports LB 933. MUD is the municipal supplier that supplies one-third of the people in the state of Nebraska. At the present time we're building what we call Platte West which means west Douglas County, which is a well field and a treatment plant that will provide for water for Omaha and the greater Omaha area for about the next 40 years. So we've designed and prepared for the next 40 years and in that regard we were certainly...we did have a municipal concern. Senator Schrock talked about ration, I don't think it was reaching that point but we certainly were concerned. When we got into discussions with the committees and the Task Force, I was surprised, I was a relatively new member, that an entity that large could work by consensus and with really different interests could come up with something that everybody agreed to. It took some months and a lot of effort on a lot of people's parts and compromise

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 55

LB 933

and it worked. And I actually didn't think it could work with consensus as the method and it did work. So we feel it's a reasonable solution and we encourage you to advance it. Any questions?

SENATOR SCHROCK: Thank you, Dan. Are there questions? Makes you wonder how they deal with water problems in arid states like Arizona...

DAN CROUCHLEY: Yes.

SENATOR SCHROCK: ...and Nevada...

DAN CROUCHLEY: Yes.

SENATOR SCHROCK: ...we're very fortunate to have the water resources we have.

DAN CROUCHLEY: Yes, we do have it.

SENATOR SCHROCK: You know, I did a little figuring here, this is LB 933 if I had let 29 more bills be introduced this could have been LB 962 all over again.

DAN CROUCHLEY: There you go. Yeah. Thank you.

SENATOR SCHROCK: Maybe just as well. Next proponent?

STEVE HUGGENBERGER: Good afternoon, Senator. I'm Steve Huggenberger, that's H-u-g-g-e-n-b-e-r-g-e-r, I'm an assistant city attorney for the city of Lincoln. I'm also a member of the Water Policy Task Force on too many committees to remember. It's been my pleasure to serve on the Task Force and to represent municipalities and to deal with this particular issue here. When the Task Force made its initial recommendations back in 2003, 2004 and LB 962 resulted, nobody on the Task Force had the idea that we were really done with water issues. We knew that there were other significant issues that were out there that needed to be addressed. Funding and continuing funding certainly was one of those issues. But we were...we wanted to be up to the challenge, we wanted to take on those new questions and LB 933 is really a continuation of the Task Force efforts. And it's been described as the nits and the nats and the tweaks and those kind of descriptions and it's certainly all

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 56

LB 933

of those things, and we're certainly supportive of all those nits and nats and modifications. But Section 17, as has been suggested, really is a little bit different and directly addresses some of the municipal issues which hadn't been addressed by any prior legislation. I think a variety of people this afternoon have talked about public water supply representing a very small component of total water use, anywhere from three to, I think, Senator Beutler was talking about six percent. But it serves the majority of the population in our state, and the cities were seeking some future assurance for that water supply for that population as well as for their economic viability. And the Task Force set about to provide something for them in that area. I should say up front that the proposal in Section 17 is not really a large city issue. It's not an Omaha-Lincoln-Grand Island issue. Those cities, and there's probably others, protect themselves through transfer permits which most of the medium and smaller class cities do not have. So the primary protection and the primary assurance of this bill is for those smaller municipalities who don't have permits. Now, permits are recognized in this proposal and that's a good thing as well, recognized as a potential limit on a guaranteed amount. Over the course of the last year in having this discussion with the Task Force and with the League of Municipalities, there was a lot of give and take, and there was a lot of compromise that went back and forth. And there were many, many ideas that were flushed out and tried and thought we were near a conclusion and got to the last moment found out we weren't and started over again. And...but we're very glad to be where we're at right now and we're very appreciative of Senator Schrock's leadership on the Task Force and the willingness of this committee to carry this bill. The benefits...the guarantees in the supply of municipalities that LB 933 addresses and provides really is a great benefit to some of the smaller and medium sized communities. And I think it will satisfy the vast majority of those communities going forward and I would urge your support of LB 933.

SENATOR SCHROCK: Thank you, Steve. Questions? Steve, appreciate your dedication to the Task Force. I'll bet you...I suppose there's at least 25 farmers on that Task Force so you're kind of outnumbered. But I bet you didn't know they could be so reasonable to work with.



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 57

LB 933

STEVE HUGGENBERGER: It was a shock to me. (Laugh)

SENATOR SCHROCK: All right.

STEVE HUGGENBERGER: Actually, I'm from a farm myself so I could speak the language a little bit.

SENATOR SCHROCK: Where at?

STEVE HUGGENBERGER: Emerson, Nebraska.

SENATOR SCHROCK: Okay. Thanks for being with us, Steve. Next proponent.

GARY MADER: Good afternoon, Senator Schrock, members of the committee. My name is Gary Mader. I'm the utilities director for the city of Grand Island. My name is spelled G-a-r-y M-a-d-e-r. Try to shorten my testimony up a bit. I think the previous speakers have already discussed the primary issues. And that is the certainty. That's important. I think the municipal water systems as we see the state develop and as we see we've beginning to reach the limits of what's been historically our economic base that is irrigated agriculture, at least in Grand Island and points west. It'll be even more important than it has been in the past that municipalities have the water supply to provide for their citizens, to provide for economic development, and to provide a standard of living in a community that will attract the workers we need to support the economic development we hope to achieve. I think one facet of this that hasn't been, I think, discussed in great length yet is that it gives time. At this point, our water resource regulation policies, practices, and procedures across the state are in a bit of a disarray. We're building a new system after it took us maybe 100 years to build the system we have now. And that new regulatory process is one that's going to take a lot of time to develop--years, decades, we don't know for sure--but we're certainly on the right track, I believe. And by preserving this allocation for the municipalities I think we have given the process time to work without cutting off additional potential for economic development, particularly recognizing that cities represent three to six percent of the total water use in the state. So with that, I would also urge the committee to advance the bill and urge its support. And thank you, Senator Schrock,

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 58

LB 933

Senator Stuhr, for your attendance at many meetings as the Water Policy Task Force. Like Steve, we've seen a lot of committee meetings over the last few years.

SENATOR SCHROCK: Thank you for your service, Gary. Are there questions? I'd remind the committee that there were five original members from the Task Force representing the municipalities and we had representatives from Omaha, Lincoln, Grand Island, Lexington, and Henderson. And the Governor did add a fiftieth member to the Task Force and that fiftieth member was from Gering. Senator Smith would remember his name, but it misses me for now.

SENATOR SMITH: Pat Heath.

SENATOR SCHROCK: Okay. Thank you, Gary. Next proponent.

LYNN REX: Senator Schrock, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And first, although it's already been stated, I would like to thank your chairman for his outstanding leadership. This has been a very difficult issue for some time and we really appreciate your leadership and probably more importantly, your patience. This is a very important bill for us because municipalities do need to have a guaranteed water supply. We appreciated Senator Kremer raising the issues last year for us with the introduction of LB 708. And as has already been noted, even though municipalities use a relatively small amount of the total amount of water used in the state of Nebraska, it is extremely important for economic development purposes that they are able to sign contracts when businesses and industries come to those municipalities, small and large, because those industries want them to be able to state on the record and sign a contract saying that they will provide, not that they can, not that they'll try, but that they will provide water for that industry to continue on. So we really appreciate your work on this. I want to thank personally just the NRDs, all the members of the task force, certainly the municipal officials that have worked long and hard, and obviously your committee counsel, and the AG's office, and DNR for their strong work on this issue as well. I'd be happy to answer any questions that you have.

SENATOR SCHROCK: If the committee doesn't have any

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 59

LB 933

question, I do.

LYNN REX: Okay.

SENATOR SCHROCK: Have you found an urban senator to prioritize this bill?

LYNN REX: We're working on that, Senator Schrock.

SENATOR SCHROCK: Good. Thank you. All right. Thank you, Lynn.

LYNN REX: Thank you very much.

SENATOR SCHROCK: Next proponent? Is there opponent testimony? Come forward, sir.

MICHAEL JACOBSON: Michael Jacobson again from Gordon, Nebraska. Do you want me to spell my name again?

SENATOR SCHROCK: Please do.

MICHAEL JACOBSON: M-i-c-h-a-e-l J-a-c-o-b-s-o-n. And I'm sorry Senator Kremer just left. In 1977 I came down with a group of people from Chadron State College to stop ITSY from getting the right of eminent domain to build coal slurry pipelines from Nebraska down into Texas. And the idea was that they needed the coal. Well, they didn't need the coal, they were after the water. And Senator Kremer put a screeching halt to that, he would not give them the right and he didn't let it go out of committee...

SENATOR SCHROCK: That's probably his father, if you don't mind my interrupting.

MICHAEL JACOBSON: Beg pardon.

SENATOR SCHROCK: That's probably his father, if you don't mind my interrupting.

MICHAEL JACOBSON: Yeah, exactly. Yeah, he was a great senator and I had very much respect for him, although he did chastise us that day for clapping and whooping it up in here. But anyway since that time, I have always been concerned that somebody else would pick the idea up and

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 60

LB 933

start piping our water out of the state. And so I have a problem here with this. The constitution of Colorado says that...expressly grants cities the power of eminent domain for waterworks and its Colorado Constitution, Article X, Section 2 and says providing that a home rule municipality shall have the power within or without its territory limits to condemn waterworks and everything required, therefore, by right of eminent domain. So if I take that in conjunction with your introducer's statement of intent and about half way down, you've got LB 933 provides an exemption for municipalities and nonmunicipal commercial and industrial uses in fully appropriated or overappropriated areas from allocation restrictions imposed after November 1, 2005. So the way I read that and I apologize I wasn't in on LB 962 and I'm not up on it like I should be to even be up here, but I had to at least get up and express my concerns. But does that give the right for a city of...from Colorado to come in here and pipe our water out of here? Or another example would be if Mr. Turner could get the water to the Colorado border and at the same time you're talking about overappropriated areas like where we are now and so we can't drill an irrigation well but a municipality like Denver or whoever could come in and drill a well and start shipping the water. And LB 962 the way I under...cursory reading of it is, it allows them to move the water over the land, right, in a pipe, is that correct?

SENATOR SCHROCK: Well, first of all, Michael, it's not...it's irregular for the person testifying to ask questions, but I will try...

MICHAEL JACOBSON: Okay.

SENATOR SCHROCK: ...but in this case I will try and answer them. As I understand it, this would be relative to only cities in the state of Nebraska. So I don't think it would give Ted Turner or a municipality from another state the right to pipe water out of the state for their municipal use. And I will double check with that, check to make sure that's correct but that's the way I understand it.

MICHAEL JACOBSON: Okay. That was my concern and thank you for your time.

SENATOR SCHROCK: But it is a concern, you know, we tried to

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 61

LB 933

address that issue of people mining water and hauling it out of state here a few years ago. Senator Jones was involved in that.

MICHAEL JACOBSON: Right. And also in the cases before the Nebraska Supreme Court right now, one of your proponents of LB 962, Central Nebraska Public Power and Irrigation, has filed a motion to intervene in that case out there. And in their motion to intervene, they've asked to stop the drilling or drilling and pumping of all the Nebraska farmers out there in that basin, whatever it is. And so I guess I am going to interpret that...I don't know whether the Central Nebraska Public Power and Irrigation was on your task force or not but that is, you know, that distresses me tremendously.

SENATOR SCHROCK: I'll answer your question there too, Michael. Don Kraus, the general manager, was on the Task Force representing the power industry because they generate more money from power than they do from irrigators.

MICHAEL JACOBSON: Sure.

SENATOR SCHROCK: My recollection is, though, they didn't ask them to stop pumping. They asked them to curtail their water use and...

MICHAEL JACOBSON: Well, I've got the case back there.

SENATOR SCHROCK: But it might be in the lawsuit, that may be the case, Michael.

MICHAEL JACOBSON: Yeah, okay. All right. Thank you very much.

SENATOR SCHROCK: Michael, just let me comment.

MICHAEL JACOBSON: Yes, sir.

SENATOR SCHROCK: My actions today were probably unprecedented. But 49 and now 50 members have worked very hard on water issues in the state and that task force is made up mainly of farmers and irrigators. And, you know, I saw the individual today as...their organization being very counterproductive to what we're trying to do in the state.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Natural Resources  
January 18, 2006  
Page 62

LB 933

I'm an irrigator, I'm a farmer, it's terribly important to my farm. I have practically no dryland ground. And water use is a serious business in this state. And unfortunately, you're in an area of the state where you haven't seen the impact of dry reservoirs and water declines and irrigation wells. But in some areas of the state it's a big problem.

MICHAEL JACOBSON: But we didn't get any rain for four years, sir

SENATOR SCHROCK: Yeah, I know. But fortunately in most areas of the state, central, and northeast, southwest, southeast it's not been an issue.

MICHAEL JACOBSON: One year we had to buy \$70,000 worth of feed to get 700 head of cows through the winter.

SENATOR SCHROCK: It's an amazing resource.

MICHAEL JACOBSON: Yes, it is.

SENATOR SCHROCK: Thank you, Michael.

MICHAEL JACOBSON: Thank you.

SENATOR SCHROCK: Next testifier, please, and I forgot are we on proponent or opponent now? Okay, we'll go to opponent if we weren't? He was opponent, I'm sorry, then we will continue with opponent testimony. I have a short memory. Then we'll go to neutral testimony. I have letters here from the Nebraska Water Resources Association, neutral and signed by DeMaris Johnson and Lee Orton (Exhibit 9) and from the Nebraska Public Power District and they do support and it's signed by Brian Barels who is on the Task Force, by the way, representing power (Exhibit 10). (See also Exhibit 11 and Exhibit 12) With that I will close the hearing on LB 933 and entertain a motion to go into Exec Session. Thank you for your attendance today.